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PART I

FEDERAL REGISTER

VOLUME 26 NUMBER 213

Washington, Friday, November 3, 1961

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Title 3—THE PRESIDENT

Executive Order 10971

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN TRANS WORLD AIRLINES, INC., AND CERTAIN OF ITS EMPLOYEES

WHEREAS a dispute exists between Trans World Airlines, Inc., a carrier, and certain of its employees represented by the Air Line Pilots Association, International, a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of employees or any carrier.

The board shall report its findings to the President with respect to this dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by Trans World Airlines, Inc., or by its employees, in the conditions out of which the dispute arose.

JOHN F. KENNEDY

THE WHITE HOUSE,
November 1, 1961.

[F.R. Doc. 61-10591; Filed, Nov. 2, 1961; 10:13 a.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 9]

PART 730—RICE

Subpart—Regulations for the Determination of Rice Acreage Allotments for the 1959 and Subsequent Crops of Rice

MISCELLANEOUS AMENDMENTS

The purpose of the amendments herein is to (1) incorporate by reference, for 1961 and subsequent crops, regulations in Part 719 for determining the acreage considered planted to rice on a farm under the conservation reserve program; (2) change the eligibility requirements for a rice acreage allotment as a new producer or a new farm in order to obtain uniformity between the rice acreage allotment regulations and the regulations for other allotment crops; (3) provide that the rice acreage allotment established for a new producer or a new farm will be reduced if it is determined that the acreage planted to rice on the farm is less than 75 percent of the farm rice acreage allotment; (4) provide that approval shall not be given to a producer's request for allocation of his rice acreage allotment to government-owned lands covered by a lease containing a clause restricting the production of price-supported crops in surplus supply; and (5) remove the incompetency clause from the succession of interest provision and allow the allotment to remain in the name of a person even though declared incompetent.

Prior to preparing this amendment, public notice (26 F.R. 8566) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003) with respect to the above amendments. No data, views, or recommendations were received pursuant to such notice and these amendments shall become effective as provided herein.

1. Section 730.1016(b) is amended by changing the title of subparagraph (3) to read *"1960 crop year"* and by deleting the words "and any subsequent crop" appearing in the third line of subparagraph (i).

2. Section 730.1016(b) is further amended by adding at the end thereof a new subparagraph (4) as follows:

(4) *1961 and subsequent crop years.* (i) The acreage planted or considered planted to rice on any farm for 1961 and any subsequent crop shall be the farm rice acreage allotment (before reapportionment) established under applicable regulations for the farm for such year: *Provided,* That the farm consists of federally-owned lands, or that for the current year or either of the two immediately preceding years an acreage equal to 75 percent or more of the farm rice acreage allotment (before reapportionment) for such year was actually planted to rice on the farm or was regarded as planted to rice under a conservation reserve contract of the soil bank. The acreage regarded as planted to rice under a conservation reserve contract shall be determined as provided in Part 719 of this Chapter, Reconstitution of Farms, Farm Allotments, and Farm History and Soil Bank Base Acreages.

(ii) If the farm does not consist of federally owned land, and for the current year and each of the two immediately preceding years an acreage equal to 75 percent of the farm rice acreage allotment (before reapportionment) for such year was not actually planted to rice or regarded as planted to rice under a conservation reserve contract, the acreage planted or considered planted to rice on such farm for the current year shall be the sum of the rice acreage and the acreage considered rice acreage as a result of participating in the conservation reserve program.

(iii) Notwithstanding the provisions of this subparagraph, the acreage determined to be planted or considered planted to rice on any farm shall not exceed the rice acreage allotment (before reapportionment) determined for such farm.

3. Subparagraphs (b) and (c) of § 730.1018 are amended to read as follows:

(b) Each person desiring a rice acreage allotment as a new producer shall file an application therefor with the county committee on or before the 31st day of January of the current year. Each such application shall contain the following information: The name, address and age of the applicant; whether arrangements have been made for the land and water necessary to produce a rice crop in the current year; the source from which irrigation water will be obtained; the equipment owned by the applicant or otherwise available to him for producing rice in the current year; whether the applicant is engaged in farming at the time of filing the application; whether the applicant expects to derive more than 50 percent of his livelihood in the current year from farming operations on the farm to which the requested allotment will be allocated; the applicant's past experience in the production of rice; and the acreage allotment requested by the applicant for the current year.

(c) To be eligible for a rice acreage allotment as a new producer, the applicant must have filed his application for an allotment on or before the date provided herein, and must establish to the satisfaction of the county committee that (1) the applicant does not own or operate any other farm in the United States for which a rice allotment is established for the current crop year; (2) the available land, type of soil, and topography of the land on the farm to which the requested allotment will be allocated is suitable for the production of rice; (3) the applicant owns, or otherwise has readily available, adequate equipment and the other facilities of production (including irrigation water) necessary to the successful production of rice on the farm; (4) the applicant will obtain, during the current year, more than 50 percent of his income from the production of agricultural commodities or products from the farm to which the requested allotment will be allocated; and (5) he has not filed his application for the purpose of obtaining a rice acreage allotment as a new producer which would be used, if obtained, as a device to offset a reduction in the rice acreage of an old producer with whom he was formerly, or will be, associated in financing, producing, or marketing rice.

4. Section 730.1021(c) is amended to read as follows:

(c) The State committee, with the assistance of county committees, shall allocate the allotment determined under § 730.1017, § 730.1018, or § 730.1020, as applicable, for a producer to the farm or farms on which it has been determined that the producer will be actively engaged in the production of rice in the current year: *Provided,* That an application for the allocation of his producer rice acreage allotment, or any part thereof, was timely filed. The sum of the producer allotments allocated to any farm, adjusted where necessary to establish an allotment for the farm within its capabilities for producing rice consistent with practical farming operations, taking into consideration crop-rotation practices, the land, labor, water and equipment available for the production of rice, the sizes of fields, the arrangement of levees and drainage facilities, the soil and other physical factors affecting the production of rice on the farm in the current year and the acreage available for such adjustments, shall be the official farm rice acreage allotment for such farm: *Provided,* That the total acreage allocated to all farms for any producer shall not exceed such producer's allotment determined under § 730.1017, § 730.1018, or § 730.1020, as applicable, by more than 5 per centum or 5 acres, whichever is larger: *And provided further,* That the total acreage allocated to all farms for any new producer shall not exceed such producer's rice acreage allotment, including the adjustment, if any, under this paragraph. If the acreage planted or considered planted to rice on any farm in which the new producer has an interest

in such acreage is less than 75 percent of the farm rice acreage allotment, the new producer's rice acreage allotment shall be reduced to the extent of his share in the underplanted allotment acreage for the farm. The sum of the upward adjustments in allocated acreages under this paragraph shall be limited to the sum of the downward adjustments that are not released by the producer for reapportionment to other farms under § 730.1024. The acreage resulting from the reduction of new producer allotments under this section shall be transferred to the reserve available to the State committee for appeals and corrections, missed farms, and adjustments under § 730.1017.

5. Section 730.1021 is further amended by adding at the end thereof a new paragraph (f) as follows:

(f) Notwithstanding any other provisions of this section, approval shall not be given to a producer's request for allocation of his rice acreage allotment to government-owned lands covered by a lease containing a clause restricting the production of price-supported crops in surplus supply.

6. Section 730.1025(a) is amended to read as follows:

(a) If a producer dies or voluntarily retires from the production of rice, his history of rice production shall be apportioned in whole or in part among the heirs, devisees, or members of his family according to the extent to which they may continue, or have continued, his farming operatons if satisfactory proof of such relationship and succession of farming operations is furnished the county committee.

7. Section 730.1027(b) is amended by changing the title of subparagraph (3) to read *"1960 crop year"* and by deleting the words "and any subsequent crop" appearing in the third line of subparagraph (i).

8. Section 730.1027(b) is further amended by adding at the end thereof a new subparagraph (4) as follows:

(4) *1961 and subsequent crop years.* (i) The acreage planted or considered planted to rice on any farm for 1961 and any subsequent crop for history purposes shall be the farm rice acreage allotment (before release and before reapportionment) established under applicable regulations for the farm for such year: *Provided,* That the farm consists of federally-owned lands, or that for the current year or either of the two immediately preceding years an acreage equal to 75 percent or more of the farm rice acreage allotment (after release and before reapportionment) for such year was actually planted or was regarded as planted to rice under a conservation reserve contract of the soil bank. The acreage regarded as planted to rice under a conservation reserve contract shall be determined as provided in Part 719 of this Chapter, Reconstitution of Farms, Farm Allotments, and Farm History and Soil Bank Base Acreages.

(ii) If the farm does not consist of federally-owned land, and for the current year and each of the two immediately preceding years an acreage equal to 75 percent of the farm rice acreage allotment (after release and before reapportionment) for such year was not actually planted or regarded as planted to rice under a conservation reserve contract, the acreage planted or considered planted to rice on such farm for the current year shall be the sum of the rice acreage and the acreage considered as rice acreage as a result of participating in the conservation reserve program and any rice allotment released for reapportionment.

(iii) Notwithstanding the provisions of this subparagraph, the acreage determined to be planted or considered planted to rice on any farm shall not exceed the rice acreage allotment (before release and before reapportionment) determined for such farm.

9. Subparagraphs (b), (c) and (d) of § 730.1029 are amended to read as follows:

(b) The request for a new farm rice acreage allotment shall be made by the farm operator, who must furnish the county committee with the following information relating to the farm for which the allotment is requested: The name and address of the farm operator; the name and address of the farm owner; the location and identification of the farm for which the allotment is being requested; the acreage of total land, cropland, and tillable land on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available for the current year; the source from which irrigation water will be obtained; the sum of other allotments established for the farm for the current year; the equipment owned by the applicant or otherwise available to him for producing rice in the current year; the applicant's past experience in the production of rice; whether or not either the owner or the operator will own or operate any other farm in the United States on which a rice allotment is established for the current year; whether the applicant expects to derive more than 50 percent of his livelihood in the current year from farming operations on the farm; and the producer's requested rice acreage allotment.

(c) To be eligible for a new farm rice acreage allotment, the application must be filed on or before the closing date referred to in paragraph (a) of this section, and the county committee must be satisfied that (1) neither the operator nor the owner of the farm covered by the application owns or operates any other farm in the United States for which a rice allotment is established for the current crop year; (2) the available land, type of soil, and topography of the land on the farm for which the allotment is requested is suitable for the production of rice; (3) the operator owns, or otherwise has readily available, adequate equipment and the other facilities of production (including irrigation water) necessary to the successful production of rice on the farm and (4) the operator will obtain, during the current year, more than 50 percent of his income from the production of agricultural commodities or products from the farm for which the new farm allotment application is filed.

(d) The rice acreage allotment for any new farm shall not exceed the smaller of (1) the rice acreage allotment requested or (2) the acreage of tillable land on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available: *Provided,* That if the acreage planted to rice on the farm in the current year is less than 75 percent of the allotment established under this section, the rice acreage allotment for the farm shall be reduced to the acreage planted to rice on the farm. The acreage resulting from any such reduction in each county shall be transferred to the reserve available to the county committee for appeals and corrections, missed farms, and adjustments as provided for under § 730.1028.

(Secs. 353, 375, 52 Stat. 61, as amended, 66, as amended, sec. 125, 70 Stat. 198, as amended; 7 U.S.C. 1353, 1375, 1813)

Effective date. The amendments contained herein shall become effective 30 days after their publication in the FEDERAL REGISTER.

Signed at Washington, D.C. on October 31, 1961.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 61-10537; Filed, Nov. 2, 1961; 8:53 a.m.]

Chapter IX—Agricultural Marketing Service and Agricultural Stabilization and Conservation Service (Marketing Agreements and Orders), Department of Agriculture

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Approval of Expenses and Fixing of Rate of Assessment for the 1961–62 Fiscal Period

On October 19, 1961, notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 9833) regarding the expenses and the fixing of the rate of assessment for the 1961–62 fiscal period under Marketing Agreement No. 84, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This regulatory program is effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which were submitted by the Growers Administrative Committee (established pursuant to the amended marketing agreement and order), it is hereby found and determined that:

§ 933.215 Expenses and rate of assessment for the 1961–62 fiscal period.

(a) *Expenses.* The expenses necessary to be incurred by the Growers Administrative Committee, established pursuant to the provisions of the aforesaid amended marketing agreement and order, for the maintenance and functioning, during the fiscal period beginning August 1, 1961, and ending July 31, 1962, both dates inclusive, of the Growers Administrative Committee and the Shippers Advisory Committee, established under the aforesaid amended marketing agreement and order, will amount to $168,000.

(b) *Rate of assessment.* (1) The rate of assessment to be paid by each handler in accordance with the amended marketing agreement and order shall be six mills ($0.006) per standard packed box of fruit shipped by such handler during the said fiscal period; and such rate of assessment is hereby approved as each handler's pro rata share of the aforementioned expenses.

(2) As used herein, the terms "standard packed box," "fiscal period," "handler," "shipped," and "fruit" shall have the same meaning as is given to each such term in said amended marketing agreement and order.

It is hereby found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the relevant provisions of said amended marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable fruit from the beginning of such period and (2) the current fiscal period began on August 1, 1961, and the rate of assessment herein fixed will automatically apply to all assessable fruit beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 31, 1961.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–10535; Filed, Nov. 2, 1961; 8:52 a.m.]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Determination Relative to Carryover of Unexpended Funds

Notice was published in the October 13, 1961, issue of the FEDERAL REGISTER (26 F.R. 9677) that consideration was being given to a proposal that unexpended assessment funds, which are in excess of expenses incurred during the fiscal period ended July 31, 1961, be carried over into subsequent fiscal periods as a reserve, to be used by the Texas Valley Citrus Committee in accordance with the provisions of the marketing agreement and Order No. 131 (7 CFR Part 1031) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice which was submitted by the Texas Valley Citrus Committee, established pursuant to the said marketing agreement and order, the said proposal is hereby approved.

§ 1031.203 Carryover of unexpended funds.

The Texas Valley Citrus Committee is hereby authorized to carryover into subsequent fiscal periods as a reserve unexpended assessment funds which are in excess of expenses incurred during the fiscal period ended July 31, 1961. Such reserve shall be used in accordance with the provisions of § 1031.35(a)(2) of the said marketing agreement and order.

Terms used herein shall have the same meaning as is given to the respective term in said marketing agreement and order.

The provisions hereof shall become effective 30 days after publication in the FEDERAL REGISTER.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 31, 1961.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–10536; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 83—SCREWWORMS

Miscellaneous Amendments

Pursuant to sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 through 7 of the Act of May 29, 1884, as amended (21 U.S.C. 111–113, 115, 117, 120, 121), the regulations designated "Screwworms", appearing in Part 83, Title 9, Code of Federal Regulations, are hereby amended in the following respects:

§ 83.1 [Amendment]

1. A new paragraph (l) is added to § 83.1 to read:

(l) *Area of temporary infestation.* The States in the eradication area, designated as such in § 83.2(c), in which the infestation of screwworms is of such a nature that additional restrictions on the interstate movement of livestock from and through such States are necessary in order to prevent screwworms from being disseminated interstate in such a way that the eradication of screwworms would be impaired.

2. Section 83.2 is amended to read:

§ 83.2 Notice relating to existence of screwworms.

(a) Notice is hereby given that screwworms usually exist in Arizona, California, Louisiana, New Mexico, Texas, and Puerto Rico throughout the year and usually exist in Arkansas during the period May 1 through November 30, both inclusive, of each year, and said areas are hereby designated as areas of recurring infestation.

(b) Notice is also hereby given that there is reason to believe that screwworms may exist in all other States of the United States (except Alaska and Hawaii) during the period May 1 through November 30, both inclusive, of each year, and such States are hereby designated as areas of seasonal infestation.

(c) Notice is also hereby given that screwworms currently exist in Alabama and Georgia, and such States are hereby designated as areas of temporary infestation.

3. Section 83.3 is amended to read:

§ 83.3 Notice of regulations.

Notice is hereby given that in order to effectually suppress and extirpate screwworms, to prevent the spread and dissemination of the contagion thereof, and to protect the livestock of the United States, the regulations in this part are promulgated to govern the interstate movement of livestock, and dogs as defined in § 83.1(t), from areas of seasonal infestation, and from or through areas of recurring infestation and areas of temporary infestation.

4. A new paragraph (c) is added to § 83.5 to read as follows:

§ 83.5 Cleaning and treatment of means of conveyance, litter, and manure.

* * * * *

(c) Whenever any livestock are inspected at an inspection station under § 83.8a, all straw and other litter and manure in the railroad car, truck, or other vehicle, used in connection with the movement of the livestock to such station shall be removed, the vehicle shall be thoroughly treated with a permitted precautionary pesticide as prescribed by a Federal inspector and under his supervision, and the straw or bedding shall be replaced with fresh material at such inspection station. No person, knowing that a railroad car, truck, or other vehicle, is one in which such livestock were moved to such an inspection station under this part, shall move such means of conveyance interstate until all litter and manure therein have been removed and the vehicle treated with a permitted precautionary pesticide as required by this paragraph.

5. The introductory text of § 83.6 is amended to read:

§ 83.6 Interstate movement of livestock from certain areas of recurring infestation by road vehicle or on foot.

Except as authorized under § 83.12, and subject to the further restrictions of § 83.8a, no livestock shall be moved by

road vehicle or on foot, interstate, into or through any part of the eradication area from Arizona, California, Louisiana, New Mexico, or Texas, at any time, or from Arkansas during the period May 1 to November 30, both inclusive, of any year, unless:

6. The introductory text of paragraph (a) of § 83.7 is amended to read:

§ 83.7 Interstate movement of livestock from certain areas of recurring infestation by railroad or water or air carrier.

(a) Except as authorized under § 83.12, and subject to the further restrictions of § 83.8a, no livestock shall be moved by railroad, interstate, into or through any part of the eradication area from Arizona, California, Louisana, New Mexico, or Texas, at any time, or from Arkansas during the period May 1 to November 30, both inclusive, of any year unless:

7. The introductory portion of paragraph (c) of § 83.7 preceding the word "unless" is amended to read:

(c) Except as authorized under § 83.12 and subject to the further restrictions of § 83.8a, no livestock shall be moved by water or air carrier, interstate, into or through any part of the eradication area from Arizona, California, Louisiana, New Mexico, Texas, or Puerto Rico, at any time, or from Arkansas during the period May 1 to November 30, both inclusive, of any year * * *

8. Paragraph (a) of § 83.8 is amended to read:

§ 83.8 Interstate movement of livestock from areas of seasonal infestation.

(a) Except as provided in paragraph (b), (c), or (d) of this section or under § 83.12, and subject to the further restrictions of § 83.8a, no livestock shall be moved by road vehicle, or on foot, or by railroad or water or air carrier, interstate, into or through any part of the eradication area from any of the areas of seasonal infestation outside the eradication area, during the period May 1 to November 30, both inclusive, of any year, unless such livestock have been inspected by a Federal or State inspector or an accredited veterinarian and found to be free of any evidence of screwworms within 36 hours prior to loading for such movement and have been certified by the inspector or veterinarian in accordance with § 83.9(d) and the certificate accompanies the livestock to destination.

9. The introductory portion of paragraph (c) of § 83.8 preceding the word "unless" is amended to read:

(c) Except as provided in paragraph (d) of this section or under § 83.12, and subject to the further restrictions of § 83.8a, no livestock shall be moved by road vehicle, or foot, or by railroad, or otherwise, interstate, into or through any part of the eradication area from any public stockyard where Federal inspection is maintained at Memphis, Tennessee, as designated in § 78.14(a) of this chapter, during the period May 1 through November 30, both inclusive, of any year * * *

10. A new § 83.8a is added to read:

§ 83.8a Interstate movement of livestock from areas of temporary infestation.

Except as authorized under paragraph (c) of § 83.12, no livestock shall be moved by road vehicle, or on foot, or by railroad or water or air carrier, interstate, from or through Alabama or Georgia into Florida except as provided in this section.

(a) *Movement by road vechicle for immediate slaughter.* Livestock may be moved interstate from or through Alabama or Georgia into Florida by road vehicle for immediate slaughter at a Federally inspected slaughtering establishment or a slaughtering establishment specifically approved under § 78.15(b) of this chapter, if: (1) the livestock are moved into Florida through one of the inspection stations designated in paragraph (e) of this section; (2) the livestock are inspected by a Federal inspector at such inspection station; (3) the livestock are found upon such inspection to be free of any evidence of screwworms; (4) any wounds of the livestock are given an approved treatment under the supervision of the inspector at such station; (5) the livestock are certified by the inspector in accordance with § 83.9(b); and (6) the livestock are accompanied to destination by such certificate. The vehicle in which such animals are transported to destination from the inspection station shall be sealed with a seal of the Animal Disease Eradication Division, Agricultural Research Service, United States Department of Agriculture, applied by the Federal inspector and such seal shall not be broken except by a State or Federal inspector or other person specifically authorized by the Director. Livestock moved interstate under this paragraph shall be slaughtered prior to the end of the work day following the arrival of the animals at the slaughtering establishment.

(b) *Movement by road vehicle or on foot for any purpose.* Livestock may be moved interstate from or through Alabama or Georgia into Florida by road vehicle or on foot for any purpose, if the livestock: (1) Are moved into Florida through one of the inspection stations designated in paragraph (e) of this section; (2) are inspected by a Federal inspector at such inspection station; (3) are found upon such inspection to be free of any evidence of screwworms; (4) are thoroughly treated with a permitted precautionary pesticide under the supervision of the inspector at such inspection station; (5) are certified by the inspector in accordance with § 83.9(a); and (6) are accompanied to destination by such certificate.

(c) *Movement by railroad or water or air carrier for immediate slaughter.* Livestock may be moved interstate from or through Alabama or Georgia into Florida by railroad or water or air carrier for immediate slaughter to a Federally inspected slaughtering establishment or to a slaughtering establishment specifically approved in § 78.15(b) of this chapter, if: (1) The livestock are inspected at the point of origin of the shipment by a Federal inspector; (2) the livestock are found upon such inspection to be free of any evidence of screwworms; (3) any wounds of the livestock are given an approved treatment under the supervision of the inspector at such point of origin; (4) the livestock are certified by the inspector in accordance with § 83.9(b); and (5) the livestock are accompanied to destination by such certificate. Livestock moved interstate under this paragraph shall be slaughtered prior to the end of the work day following the arrival of the animals at the slaughtering establishment.

(d) *Movement by railroad or water or air carrier for any purpose.* Livestock may be moved interstate from or through Alabama or Georgia into Florida by railroad or water or air carrier for any purpose if the livestock: (1) are inspected at the point of origin of the shipment by a Federal inspector; (2) are found upon such inspection to be free of any evidence of screwworms; (3) are thoroughly treated with a permitted precautionary pesticide under the supervision of the inspector at such point of origin; (4) are certified by the inspector in accordance with § 83.9(a); and (5) are accompanied to destination by such certificate.

(e) *Designation of inspection stations.* The following places along the boundary between Alabama and Georgia and Florida are designated as inspection stations under this part for livestock moving by road vehicle or on foot, interstate, from or through Alabama or Georgia into Florida:

(1) *Geneva, Alabama.* The premises of the Geneva Stockyards in Geneva County, Alabama, located on the south side of Alabama Highway No. 52 at Eunola, Alabama, approximately 3½ miles east of Geneva, Alabama.

(2) *Folkston, Georgia.* The premises of O. C. Mizell in Charlton County, Georgia, on the west side of U.S. Highways 123 and 301, approximately 2 miles south and east of Folkston, Georgia.

(3) *Thomasville, Georgia.* The premises of P. C. Benson at Thomasville in Thomas County, Georgia, located on the east side of U.S. Highway 319, approximately 2 miles north of the intersection of New U.S. Highway 19 and U.S. Highway 319.

11. Paragraphs (a) and (b) of § 83.9 are amended to read:

§ 83.9 Certificates; forms and distribution.

(a) When a lot of livestock has been inspected and found to be free of any evidence of screwworms and has been thoroughly treated with a permitted precautionary pesticide at an inspection station or other place in accordance with § 83.6(a), § 83.7(a)(1), § 83.8(c)(1), § 83.8a (b) or (d), or § 83.12(a), the inspector may issue a certificate in quadruplicate, reciting such facts, identifying the lot by number of livestock, kind, breed, and sex, and giving the date of inspection and treatment, the names and addresses of the consignor and consignee, and the point of origin and destination of the shipment.

(b) When a lot of livestock, to be moved under this part, for immediate slaughter, to a federally inspected slaughtering establishment or a slaughtering establishment specifically approved in § 78.15(b) of this chapter, has been inspected and found free of any evidence of screwworms and treated at an inspection station or other place in accordance with § 83.6(b), § 83.7(a)(2), § 83.8(c)(2), § 83.8a (a) or (c), or § 83.12(a), the inspector may issue a certificate, in quadruplicate, reciting that the lot has been so inspected and found free of any evidence of screwworms and treated, identifying the lot by number of livestock, kind, breed, and sex, and giving the data of inspection and treatment, the names and addresses of the consignor and consignee, and the point of origin and destination of the shipment.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended; 21 U.S.C. 111–113, 120, 121. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended; 21 U.S.C. 115, 117, 19 F.R. 74, as amended)

The foregoing amendments impose additional requirements upon the interstate movement of livestock and certain dogs from or through Alabama or Georgia into Florida. There are currently existing in Alabama and Georgia screwworm infestations which may be disseminated into Florida, an area currently free of screwworms, if additional preventive measures are not taken regarding the interstate movement of livestock into Florida. The amendments should be made effective promptly in order to accomplish their purpose in the public interest. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to such amendments are impracticable, unnecessary, and contrary to the public interest, and good cause if found for making them effective less than 30 days after their publication in the FEDERAL REGISTER.

Effective date. The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 31st day of October 1961.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 61–10563; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 262—RULES OF PROCEDURE

Actions on Applications or Requests, and Similar Matters; Bank Holding Company and Merger Applications

1. Effective November 1, 1961, Part 262 is amended by adding the following new paragraph (g) to § 262.4:

§ 262.4 Action on applications or requests, and similar matters.

* * * * *

(g) *Bank holding company and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), hereafter called holding company applications, and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828), hereafter called merger applications. Unless otherwise indicated, these procedures apply to both types of applications.

(1) The Board issues each week a list that identifies holding company and merger applications received during the preceding week. Notice of receipt of each holding company application is published in the FEDERAL REGISTER as provided in § 222.4(e)(2) of this chapter [Regulation Y].

(2) If a hearing is required by law or if the Board determines that a hearing for the purpose of taking evidence is desirable, the Board will issue an order for such a hearing, and notice thereof will be published in the FEDERAL REGISTER. Any such hearing will be conducted by a hearing examiner or hearing officer in accordance with the Board's Rules of Practice for Formal Hearings (Part 263 of this chapter) and, unless otherwise ordered by the Board, shall be public.

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including Governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation of views shall be public and notice of such public proceeding will be published in the FEDERAL REGISTER. Participants in any oral presentation of views will be allotted reasonable periods of time for presentation of their views.

(4) The Board's action on each application is embodied in an Order that indicates the voting of members of the Board and is accompanied by a Statement of the reasons for the Board's action. Both the Order and accompanying Statement are released to the press. Normally, the Statement is issued at the time of issuance of the Order; where this is not practicable, the Statement is issued as promptly as possible after issuance of the Order. Each such Order is published in the FEDERAL REGISTER; and the Order and Statement are published in the next succeeding issue of the Federal Reserve Bulletin.

(5) Each Order of the Board approving an application includes, as a condition of such approval, a requirement that the transaction approved shall not be consummated within seven calendar days following the date of such Order, except in emergency or other situations as to which the Board determines that such a requirement would not be in the public interest. Each Order approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consummated within three months and, in the case of acquisition by a holding company of stock of a newly organized bank, a requirement that such bank shall be opened for business within six months.

(6) After action by the Board on an application, the Board will not grant any request for reconsideration of its action, unless the request presents relevant facts that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate.

2a. The purpose of this amendment is to inform the public of procedures followed by the Board of Governors of the Federal Reserve System with respect to applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828).

b. Notice, public participation, and deferred effective date are not required by section 4 of the Administrative Procedure Act for rules of agency procedure or practice, and therefore were not provided in connection with the adoption of these amendments.

(Sec. 11(i), 38 Stat. 262; 12 U.S.C. 248(i))

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 61–10538; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 950; Amdt. 362]

PART 507—AIRWORTHINESS DIRECTIVES

Canadair CL–44D4 Aircraft

There have been failures of the elevator tab tension rods on Canadair CL–44D4 aircraft. To preclude further failures, an airworthiness directive requiring replacement of the elevator tab tension rods every 450 hours' time in service is considered necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

CANADAIR. Applies to all CL–44D4 aircraft. Compliance required as indicated.

To preclude failure of the elevator tab tension rods, P/N 28–90031, the life of each rod is limited to 450 hours' time in service.

Every 450 hours' time in service, all eight tension rods of the elevator tab system must be replaced with similar parts supplied by Canadair or FAA approved equivalent. For those aircraft with more than 450 hours' time in service on the effective date of this AD, rods must be replaced within the next 25 hours' time in service.

(Canadair Service Bulletin No. CL-44D4-190 applies to this subject).

This amendment shall become effective November 3, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10498; Filed, Nov. 2, 1961; 8:46 a.m.]

[Regulatory Docket No. 956; Amdt. 364]

PART 507—AIRWORTHINESS DIRECTIVES

Brantly B-2 Helicopters

There have been failures of the bonding between the skin and plastic foam filler of the main rotor blades on Brantly B-2 helicopters. To preclude complete bonding failure which would result in loss of the rotor blades, an airworthiness directive requiring inspection of the blades is necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BRANTLY. Applies to all Model B-2 helicopters equipped with B2-248-53 or B2-248-53A outboard main rotor blades. Compliance required as indicated.

As the result of bond separation between the skin and foam filler on the inboard end of the B2-248-53 and -53A main rotor blades and cracks around the root fitting in both the upper and lower skins the following inspections are required:

(a) Within the next 10 hours' time in service unless already accomplished within the last 15 hours' time in service and at the expiration of each 25 hours' time in service thereafter, inspect the upper and lower skins of the inboard end of the B2-248-53 and -53A blades as follows:

(1) Inspect for bond separation by feel or sound tests. If the skin is separated from the foam filler a sponginess will be felt or a dullness in tone will be heard when tapped with a coin. Blades with voids exceeding 12 inches in length shall be replaced prior to further flight.

(2) Inspect for cracks between rivets in the skins with a 5-power or greater magnifying glass. If any cracks are found around two or more rivets the blade must be replaced prior to further flight.

(b) When blades are replaced they must be replaced with either B2-248-53M or B2-248-101 blades. Brantly Service Letter No. 31A must be complied with when B2-248-101 blades are installed.

(c) In addition to the inspection interval specified in (a), the inspection required in (a)(1) also must be made prior to each flight after the initial inspection.

(d)(1) The inspections required in (a) shall be made by a person as authorized by CAR 18.11.

(2) The inspections required in (c) and appropriate log book entries thereon are hereby authorized to be made by the pilot.

(Brantly Service Letter No. 28A applies to this same subject.)

This amendment shall become effective November 4, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 31, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10577; Filed, Nov. 2, 1961; 8:55 a.m.]

[Regulatory Docket No. 957; Amdt. 365]

PART 507—AIRWORTHINESS DIRECTIVES

Boeing 707 Series Aircraft

Investigation has shown that extensions of repetitive inspection intervals based on service experience may be granted to some operators of Boeing 707 Series aircraft in complying with Amendment 265, 26 F.R. 2114, as amended by Amendment 276, 26 F.R. 3298. Accordingly, Amendment 265 is being amended to permit extension of inspection intervals where justified.

Since this amendment provides a procedure by which a different inspection interval may be established for the operators concerned, and thus relieves a present restriction, compliance with notice and public procedure hereon is unnecessary, and it may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 265, (26 F.R. 2114) as amended by Amendment 276, (26 F.R. 3298), is further amended by adding paragraph (f) as follows:

(f) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Western Region, may adjust the repetitive inspection intervals specified in this Airworthiness Directive to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for such operator.

This amendment shall become effective November 3, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 1, 1961.

GEORGE C. PRILL,
Director, Flight Standards Service.

[F.R. Doc. 61-10578; Filed, Nov. 2, 1961; 8:55 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 61-WA-130]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Control Zone

On August 2, 1961, a notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 6941) stating that the Federal Aviation Agency proposed to alter the Reno, Nev. (Stead Air Force Base and Reno Airport) control zones.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all revelant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following action is taken:

§ 601.1984 [Amendment]

1. In § 601.1984 (14 CFR 601.1984) "Reno, Nev.: Reno Airport." and "Reno, Nev.: Stead AFB." are deleted.

2. In Part 601 (14 CFR Part 601) the following section is added:

§ 601.2495 Reno, Nev., control zone (Reno Airport).

Within a 5-mile radius of the Reno Airport (latitude 39°30'02" N., longitude 119°46'07" W.) and within 2 miles either side of the Reno ILS localized N course extending from the 5-mile radius zone to the Sparks, Nev., RBN.

3. In Part 601 (14 CFR Part 601) the following section is added:

§ 601.2496 Reno, Nev., control zone (Stead AFB).

Within a 5-mile radius of the Stead AFB (latitude 39°40'25" N., longitude 119°52'40" W.) excluding the portion which coincides with the Reno, Nev., (Reno Airport) control zone (§ 601.2495).

These amendments shall become effective 0001 e.s.t., January 11, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on October 27, 1961.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 61-10500; Filed, Nov. 2, 1961; 8:46 a.m.]

[Airspace Docket No. 61-FW-73]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 608—SPECIAL USE AIRSPACE

Designation of Restricted Area and Alteration of Continental Control Area

The purpose of these amendments to §§ 608.29 and 601.7101 of the Regulations of the Administrator is to designate the Venice, Fla., Restricted Area R-2920 and to alter the description of the continental control area to include this new restricted area.

The Department of the Air Force has stated an urgent and immediate requirement for the designation of a restricted area within a 3-nautical mile radius of latitude 27°03'30" N., longitude 82°26'-15" W., excluding the portion which would overlie Control Area Extension 1228. This restricted area will be utilized to contain high altitude rocket launching activities which will be conducted in conjunction with certain missile launchings from Cape Canaveral, Fla. The Department of the Air Force has justified this requirements as a matter of military urgency and necessity, and in the interest of national defense.

This restricted area is being designated on a part-time basis and will be activated approximately twice each month, normally during the hours of darkness, which will result in minimum interference to other aeronautical activities in the area. R-2920 will be activated by the issuance of NOTAMS at least 24 hours in advance of the activation. Further, in order to promote the efficient utilization of this restricted area, it is designated herein as a joint use area, with the Miami Air Route Traffic Control Center as the controlling agency.

In addition, it is necessary to include R-2920 in the continental control area in order to provide controlled airspace for the portion of Jet Route No. 43 which overlies this restricted area.

For the reasons stated above, the Administrator finds that a condition exists which requires expeditious action in the interest of national defense and safety and that notice and public procedure hereon are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

1. In § 608.29 Florida (26 F.R. 7192) the Venice, Fla., Restricted Area R-2920 is added to read:

R-2920 Venice, Fla.

Boundaries. A circular area with a 3-nautical mile radius centered at latitude 27° 03'30" N, longitude 82°26'15" W., excluding the portion E of a line extending from latitude 27°05'50" N., longitude 82°24'10" W., to latitude 27°02'00" N., longitude 82°24'15" W.

Designated altitudes. Unlimited.

Time of designation. As published in NOTAMS, to be activated approximately twice a month normally during the hours of darkness from November 16, 1961, to November 15, 1962.

Controlling agency. Federal Aviation Agency, Miami ARTC Center.

Using agency. Commander, Air Proving Ground Center, Eglin AFB, Fla.

2. In the text of § 601.7101 (26 F.R. 1399) the following is added:

R-2920 Venice, Fla.

These amendments shall become effective 0001 e.s.t. November 16, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on October 31, 1961.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 61-10499; Filed, Nov. 2, 1961; 8:46 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

[Statement of General Policy No. 61-1; Amdt. 4]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Price Levels

OCTOBER 31, 1961.

As observed in the Commission's Statement of General Policy No. 61-1, the price levels announced therein were to be "adjusted from time to time as such facts as may come before us compel such adjustments." On October 25, 1960, the Commission issued its first amendment to that Statement of Policy announcing a price level (not including state taxes) of 21.5 cents per Mcf (at 15.025 psia) for initial sales from Southern Louisiana. This ceiling price represented the Commission's judgment based upon the facts then before it. Since that date, four Courts of Appeals have passed upon the proper level for initial rates in Southern Louisiana in light of the Supreme Court's decision in the case of Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378 (Catco); they have unanimously viewed this price level for initial sales in the area as being "out-of-line."[1]

On May 10, 1961 the Commission instituted an area proceeding for the Southern Louisiana area (AR 61-2) contemplating that it would make an interim decision in that proceeding at an early date in order to redetermine the appropriate initial rate for Southern Louisiana. Our review of the examiner's report of the prehearing conference in that proceeding indicates, however, that this is not feasible. Accordingly, we propose to eliminate the contemplated first phase of AR 61-2 and to establish a new maximum price level for initial sales in Southern Louisiana.

It is apparent that it would be contrary to the public interest for us to maintain a price level in Southern Louisiana which the courts have ruled out-of-line. Indeed, apart from the fact that we are necessarily guided by decisions of the courts, it is the present opinion of the Commission that the order of October 25, 1960, fixed the price at a level which afforded inadequate assurance of protection to customer and consumer interests. We have carefully reexamined the matter, reviewing the factors set forth in our original statement of policy[2] in light of the decisions previously mentioned and in light of present conditions in the area. We have taken into account judicial rulings that certain sales in the area do not provide reliable indicia and have considered, inter alia, information that was not previously available to the Commission, including evidence in pending cases covering producers' revenue requirements and cost trends in the area.

Our guiding purpose has been to arrive at a revised price which will enable the Commission to hold the line on new sales in the area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas. We conclude that, effective this date, the ceiling price level for initial sales in Southern Louisiana, inclusive of state taxes, shall be 21.25 cents per Mcf (at 15.025 psia).

There remains for consideration the appropriate price level for initial sales of gas produced off the coast of Louisiana in those areas determined to be within the Federal domain. We conclude that, effective this date, the level for initial off-shore sales not subject to the taxing jurisdiction of the State of Louisiana shall be 19.5 cents per Mcf (at 15.025 psia). The differential (1.75 cents) between this price and the price set for sales which fall within the State's taxing jurisdiction is less than the amount of the State's taxes (2.3 cents per Mcf). This differential provides producers with an additional incentive to explore for and extract natural gas of great value

[1] United Gas Improvement Co. v. F.P.C., 283 F. 2d 817 (CA9), certiorari denied sub nom. California Co. v. United Gas Improvement Co., 365 U.S. 881, and Superior Oil Co. v. United Gas Improvement Co., 365 U.S. 879; Public Service Commission v. F.P.C., 287 F. 2d 146 (CADC), certiorari denied sub nom. Hope Natural Gas Co. v. Public Service Commission, 365 U.S. 880, and Shell Oil Co. v. Public Service Commission, 365 U.S. 882; United Gas Improvement Co. v. F.P.C., 287 F. 2d 159 (CA10); United Gas Improvement Co. v. F.P.C., 290 F. 2d 133 (CA5), certiorari denied sub nom. Sun Oil Co. v. United Gas Improvement Co., — U.S. — (October 9, 1961); United Gas Improvement Co. v. F.P.C., 290 F. 2d 147 (CA5), certiorari denied sub nom. Superior Oil Co. v. United Gas Improvement Co., 366 U.S. 965.

[2] These were summarized as follows: "cost information from all decided and pending cases, existing and historical price structures, volumes of production, trends in production, price trends in the various areas over a number of years, trends in exploration and development, trends in demands, and the available markets for the gas."

to the Nation's economy in areas beyond the limits of the State's jurisdiction.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 61-10526; Filed, Nov. 2, 1961; 8:51 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

POTASSIUM IODIDE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Encapsulations, Inc., 269 Chestnut Street, Newark 5, New Jersey, and other relevant material, has concluded that the following regulation should issue with respect to the food additive potassium iodide as a nutritional supplement in mineral and vitamin-mineral preparations. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR Part 121) are amended by adding to Subpart D the following new section:

§ 121.1073 Potassium iodide.

The food additive potassium iodide may be safely used in accordance with the following prescribed conditions:

(a) The food additive is used or intended for use as a nutritional supplement in mineral and vitamin-mineral preparations marketed under labeling which provides that the maximum daily intake of the additive does not exceed 0.15 milligram of iodine.

(b) To assure safe use of the additive in addition to the other information required by the act:

(1) The label of the additive shall bear:

(i) The name of the additive.

(ii) A statement of the concentration of the additive in any mixture.

(iii) The designation "food grade."

(2) The label or labeling shall bear adequate directions to provide a final product that complies with the limitations prescribed in paragraph (a) of this section.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: October 26, 1961.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

[F.R. Doc. 61-10511; Filed, Nov. 2, 1961; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER A—GENERAL

[CGFR 61-40]

PART 3—COAST GUARD DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT AREAS

SUBCHAPTER C—AIDS TO NAVIGATION

PART 67—PRIVATE AIDS TO NAVIGATION, OUTER CONTINENTAL SHELF AND WATERS UNDER THE JURISDICTION OF THE UNITED STATES

Subpart 67.50—District Regulations

MISCELLANEOUS AMENDMENTS

The Coast Guard's organization is divided into Coast Guard Districts to assist in the performance of assigned functions and duties. The Coast Guard District Commander, within the confines of his District, is responsible for the performance of assigned Coast Guard functions under the general superintendence of the Commandant. In general terms these functions include maritime law enforcement, saving and protecting life and property, safeguarding navigation, and readiness for military operations.

A Coast Guard District consists of a defined area within the United States, its territories and possessions, as well as described portions of the high seas. These descriptions of the Coast Guard Districts are established by the Secretary of the Treasury. They are first published in a directive series designated "Coast Guard General Orders." The descriptions of the Coast Guard Districts now in effect are in this document and they were copied from Coast Guard General Order No. 1, as amended by General Order Nos. 6, 8 to 11, incl. Within such Districts are Marine Inspection Zones and Captain of the Port Areas. They define the areas in which certain Coast Guard officials are responsible for the performance of assigned functions and duties under the superintendence and direction of the Coast Guard District Commander. As the marine inspection duties and Captain of the Port duties are different but are performed within the same general area, the boundaries may or may not coincide.

A Marine Inspection Zone is a defined area within a Coast Guard District. Under the superintendence and direction of the Coast Guard District Commander, an Officer in Charge, Marine Inspection, is in charge of a Marine Inspection Zone for the performance of duties with respect to inspections, enforcements, and administration of Titles 52 and of 53 of the Revised Statutes and acts amendatory thereof or supplemental thereto, and rules and regulations prescribed thereunder in 33 CFR Parts I (General Provisions), 19 (Waivers of Navigation and Vessel Inspection Laws and Regulations), 80 through 86 (Navigation Requirements for Certain Inland Waters), 90 through 92 (Navigation Requirements for Great Lakes and St. Mary's River), 95 and 96 (Navigation Requirements for Western Rivers), 100 (Marine Regattas or Marine Parades), 121 (Special Validation Endorsement for Emergency Service for Merchant Marine Personnel), 135 (Lights for Coast Guard Vessels of Special Construction), and 140 through 146 (Artificial Islands and Fixed Structures on the Outer Continental Shelf), and in 46 CFR Chapter I (Shipping).

The Captain of the Port Area is a defined area within a Coast Guard District. Under the superintendence and direction of the Coast Guard District Commander, the Captain of the Port and his representatives are responsible for the performance of those functions of the Coast Guard concerning maritime law enforcement, saving and protecting life and property, control over anchorages and the movement of vessels within this assigned area. In certain areas a representative of the Captain of the Port may be designated for the performance of specific functions, such as the representative of the Captain of the Port at Sault Ste. Marie, Michigan, who is in charge of the St. Mary's River Patrol and controls traffic on the St. Mary's River as provided in 33 CFR Part 92. With respect to the safeguarding of vessels, harbors, ports, and waterfront facilities of the United States, the Captains of the Port where designated (otherwise the Coast Guard District Commander) perform assigned Coast Guard functions as further described in 33 CFR Part 6 (Protection and Security of Vessels, Harbors, and Waterfront Facilities), Parts 121, 122, and 124 (Security of Vessels, Including Control Over Movement of Vessels), 125 and 126 (Security of Waterfront Vessels) and 46 CFR Parts 146 and 147 (Dangerous Cargo Regulations). The purpose for publishing specific descriptions of Coast Guard Districts, Marine Inspection Zones and Captain of the Port Areas is to assist the public in determining initially where application need be made, with respect to activities

under the superintendence of the Coast Guard. This information has been previously published in various pamphlets distributed by the Coast Guard to the public, as notices in the FEDERAL REGISTER and portions thereof were published as parts of 33 CFR 67.50–5 to 67.50–45, inclusive.

Because the regulations in this document are rules describing Coast Guard organization, it is hereby found that the Coast Guard is exempt from compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements).

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167–3, dated May 22, 1953 (18 F.R. 2962), 167–15, dated January 3, 1955 (20 F.R. 840), 167–17, dated June 25, 1955 (20 F.R. 4976), and 167–23, dated July 27, 1956 (21 F.R. 5852), to promulgate regulations in accordance with the statutes cited with the regulations below, the following regulations are prescribed and shall be in effect on and after the date of publication in the FEDERAL REGISTER.

Subchapter A is amended by inserting after Part 1 a new Part 3 reading as follows:

AUTHORITY: §§ 3.01–1 to 3.85–55 issued under sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545; 5 U.S.C. 1002, 14 U.S.C. 633.

Subpart 3.01—General Provisions

§ 3.01–1 General description.

(a) The Coast Guard's organization is divided into Coast Guard Districts to assist in the performance of assigned functions and duties. A Coast Guard District consists of a defined area within the United States, its territories and possessions, including portions of the high seas adjacent thereto. These descriptions are established by the Secretary of the Treasury in a series of directives designated "Coast Guard General Orders."

(b) The Coast Guard District Commander is in command of a Coast Guard District and his office may be referred to as a Coast Guard District Office. (See § 1.01–1 of this subchapter.) An Officer in Charge, Marine Inspection, is in command of a Marine Inspection Zone and his office may be referred to as a Coast Guard Marine Inspection Office. (See § 1.01–20 of this subchapter.) The Captain of the Port is in command of a Captain of the Port Area and his office may be referred to as a Captain of the Port Office. (See § 1.01–30 of this subchapter.)

(c) Various Coast Guard floating units and shore units come under the cognizance of the Coast Guard District in which located except certain Headquarters' units performing specialized functions.

§ 3.01–5 Assignment of functions.

(a) The Secretary of the Treasury in Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), and 167–17, dated June 25, 1955 (20 F.R. 4976), delegated to the Commandant, United States Coast Guard, authority to prescribe rules and regulations as necessary to carry out the provisions of any law administered by the Coast Guard. The general statements of policy in the rules describing Coast Guard organization are prescribed pursuant to section 3 of the Administrative Procedure Act (5 U.S. Code 1002), and section 633 of Title 14, U.S. Code, in the act of August 4, 1949.

Subpart 3.05—First Coast Guard District

§ 3.05–1 First district.

(a) The District Office is in Boston, Massachusetts.

(b) The First Coast Guard District shall comprise Maine and New Hampshire; Vermont, except the counties of Orleans, Franklin, Grand Isle, Chittenden, and Addison; Massachusetts, except

the waters of Congamond Lakes; Rhode Island, with the exception of Watch Hill Light Station; that portion of Connecticut containing the waters of Beach Pond in New London County; all United States naval reservations on shore in Newfoundland; the ocean area north of a line from Watch Hill Light south to Montauk Point Light, thence 112° T.

§ 3.05–10 Boston Marine Inspection Zone.

(a) The Boston Marine Inspection Office is in Boston, Massachusetts.

(b) The Boston marine inspection zone boundary starts at a point on the coast of New Hampshire 5 miles south of 43° N. latitude; thence due west to the western boundary of the Vermont State line; thence south along the New York-Massachusetts State lines to the southern boundary of Massachusetts; thence east along the southern boundary of Massachusetts, excluding the waters of Congamond Lakes, to the town of North Easton, Mass., approximately 10 miles north of Taunton, Mass.; thence southeast to Butler's Point at the southeast tip of Sippican Neck (this line follows the southeast shore line of Sippican Neck but does not include any of the waters of Sippican Harbor, its bays, coves, or inlets); thence southwest to Uncatena Island lighted bell buoy at approximately 41°32′ N. latitude and 70°-42′ W. longitude; thence south, east, and south (through the passage between Woods Hole and Nonamesset Island) to Quick Ledge lighted buoy at approximately 41°30 N. latitude and 70°40′ W. longitude; thence southwest to Gay Head lighted gong buoy at approximately 41°22′ N. latitude and 70°51′ W. longitude; thence due south to 41° N. latitude.

§ 3.05–15 Portland, Maine, Marine Inspection Zone.

(a) The Portland, Maine, Marine Inspection Office is in Portland, Main.

(b) The Portland marine inspection zone boundary starts at a point on the coast of New Hampshire, 5 miles south of 43° N. latitude; thence due west to the Vermont State line; thence north along the Vermont State line to the Addison County line; thence north along the eastern boundaries of the Addison, Chittenden, Franklin, and Orleans Counties until this line meets the Canadian border; thence north, east, and south along the Canadian border to the sea.

§ 3.05–20 Providence Marine Inspection Zone.

(a) The Providence Marine Inspection Office is in Providence, Rhode Island.

(b) The Providence marine inspection zone boundary starts at but does not include Montauk Point, Long Island; thence due north to Watch Hill, R.I.; thence follows the east shore of the Pawcatuck River to Westerly, R.I.; thence north along the Rhode Island State line, including the waters of Beach Pond, until it touches the Massachusetts State line; thence east to the town of North Easton, Mass., approximately 10 miles north of Taunton, Mass.; thence southeast to Butler's Point at the southeast tip of Sippican Neck (this line follows the southeast shore line of Sippican Neck and includes the waters of Sippican Harbor as well as all bays, coves, and inlets); thence southwest to Uncatena Island lighted bell buoy at approximately 41°32′ N. latitude and 70°42′ W. longitude; thence south, east, and south (through the passage between Woods Hole and Nonamesset Island) to the Quick Ledge lighted buoy at approximately 41°30′ N. latitude and 70°40′ W. longitude; thence southwest to Gay Head lighted gong buoy at approximately 41°22′ N. latitude and 70°51′ W. longitude; thence due south to 41° N. latitude. All of the Elizabeth Islands are under the jurisdiction of the Providence marine inspection office.

§ 3.05–55 Boston Captain of the Port.

(a) The Boston Captain of the Port Office is in Boston, Massachusetts.

(b) The Boston Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 70°50′00″ W. meridian, on the south the 42°13′00″ N. parallel, on the west the 71°05′00″ W. meridian, and on the north the 42°25′00″ N. parallel.

§ 3.05–60 Providence Captain of the Port.

(a) The Providence Captain of the Port Office is in Providence, Rhode Island.

(b) The Providence Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Point Judith, R.I., Light in an east-northeasterly direction to the southern tip of Sakonnet Point, R.I., thence in a north-northeasterly direction to 41°45′00″ N., 71°07′40″ W., thence westerly to 41°45′00″ N., 71°20′-00″ W., thence in a north-northwesterly direction to 41°48′00″ N., 71°22′00″ W., thence northerly to 41°53′00″ N., 71°-22′00″ W., thence westerly to 41°53′00″ N., 71°29′00″ W., thence southerly to Point Judith Light.

§ 3.05–70 Portland Captain of the Port.

(a) The Portland Captain of the Port Office is in Portland, Maine.

(b) The Portland Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Cape Elizabeth Light in a northeasterly direction to Halfway Rock Light, thence north to 43°50′00″ N., 70°02′15″ W., in Maquoit Bay, thence west to 43°50′00″ N., 70°-19′00″ W., thence south to 43°34′00″ N., thence easterly to Cape Elizabeth Light.

Subpart 3.10—Second Coast Guard District

§ 3.10–1 Second district.

(a) The District Office is in St. Louis, Missouri.

(b) The Second Coast Guard District shall comprise West Virginia, Kentucky, Tennessee, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Wyoming, Colorado, Iowa, Missouri, Pennsylvania south of latitude 41° N. and west of longitude 79° W.; those parts of Ohio and Indiana south of latitude 41° N.; Illinois, except that part north of latitude 41° N. and east of longitude 90° W.; Wisconsin south of latitude 46°20′ N. and west of longitude 90° W.; Minnesota south of latitude 46°20′ N.; and those parts of Arkansas, Mississippi, and Alabama north of latitude 34° N.

§ 3.10–10 St. Louis Marine Inspection Zone.

(a) The St. Louis Marine Inspection Office is in St. Louis, Mo.

(b) The St. Louis marine inspection zone boundary starts at 42°30′ N. latitude and 111° W. longitude, on the Wyoming, Idaho State line and runs due east to, but not including, Sioux City, Iowa; thence southeast to, but not including Keokuk, Iowa; thence northeast to 41°10′ N. latitude and 90° W. longitude; thence due south to 41° N. latitude; thence due east to 87°10′ W. longitude; thence due south to and including Fowler, Ind.; thence southwest to Urbana, Ill.; thence south to Arcola, Ill.; thence south to Altamont, Ill.; thence south to Mount Vernon, Ill.; thence south to Oak Ridge, Mo.; thence west to Licking, Mo.; thence southwest to Cabool, Mo.; thence west to Springfield, Mo.; thence northwest to Greenfield, Mo.; thence northwest to McPherson, Kans.; thence west to La Crosse, Kans.; thence due west to where this line touches the Utah, Colorado State line; thence north along the Utah, Colorado State line to 41° N. latitude and 109° W. longitude; thence due west along the Utah, Wyoming State line to 111° W. longitude; thence due north along the Wyoming State line to 42°30′ N. latitude and 111° W. longitude.

§ 3.10–15 Cairo Marine Inspection Zone.

(a) The Cairo Marine Inspection Office is in Cairo, Illinois.

(b) The Cairo marine inspection zone boundary starts at 41° N. latitude and 87°10′ W. longitude; thence south to, but not including Fowler, Ind.; thence southwest to, but not including, Urbana, Ill.; thence south to, but not including Arcola, Ill.; thence south to, but not including, Altamont, Ill.; thence south to, but not including, Mount Vernon, Ill.; thence southwest to, but not including Oak Ridge, Mo.; thence southeast to, but not including, Benton, Mo.; thence south to, but not including, Sikeston, Mo.; thence due east to Scottsville, Ky.; thence northwest to, but not including, Mount Vernon, Ind.; thence northeast to 86°10′ W. longtitude and 40°45′ N. latitude; thence northwest to 41° N. latitude and 86°30′ W. longitude; thence due west to 87°10′ W. longitude.

§ 3.10–20 Cincinnati Marine Inspection Zone.

(a) The Cincinnati Marine Inspection Office is in Cincinnati, Ohio.

(b) The Cincinnati marine inspection zone boundary starts at 86°30′ W. longitude and 41° N. latitude; thence southeast to, but not including, Anderson,

Ind.; thence southeast to, but not including Carrollton, Ky.; thence to, but not including, Winchester, Ky.; thence to, but not including, Cannel City, Ky.; thence to, but not including, Jenkins, Ky.; thence east and north along the Kentucky State line to Louisa, Ky.; thence in a northerly direction to Portsmouth, Ohio; thence north to 41° N. latitude, approximately 8 miles west of New Washington, Ohio; thence due west to 86°30′ W. longitude.

§ 3.10–25 Dubuque Marine Inspection Zone.

(a) The Dubuque Marine Inspection Office is in Dubuque, Iowa.

(b) The Dubuque marine inspection zone boundary starts at a point where the Montana-North Dakota State line touches the Canadian border; thence east along the Canadian border until it meets the Red River of the North; thence south along this river to 46°25′ N. latitude and 96°35′ W. longitude; thence due east until this line meets 90° W. longitude; thence due south to 41°10′ N. latitude; thence in a southwesterly direction to and including Keokuk, Iowa; thence in a northwesterly direction to and including Sioux City, Iowa; thence due west to the Idaho, Wyoming State line at 42°30′ N. latitude and 111° W. longitude; thence north along the Idaho, Wyoming State line to 45° N. latitude; thence east along the Wyoming State line to 45° N. latitude and 104° W. longitude; thence due north along the Montana State line to the Canadian border.

§ 3.10–30 Huntington Marine Inspection Zone.

(a) The Huntington Marine Inspection Office is in Huntington, West Virginia.

(b) The Huntington marine inspection zone boundary starts at 41° N. latitude, approximately 8 miles west of New Washington, Ohio; thence proceeds south to, but not including, Portsmouth, Ohio; thence southeast to Louisa, Ky.; thence along the Kentucky, West Virginia State line (Big Sandy River) to the Kentucky, West Virginia, and Virginia State line; thence north and east along the West Virginia, Virginia State line to Fairfax, W. Va.; thence northwest to, but not including, Fairmont, W. Va.; thence northwest to Dam No. 13, Ohio River (3½ miles west of Wheeling, W. Va.); thence continuing northwest in a straight line to 81°40′ W. longitude and 41° N. latitude; thence due west to approximately 8 miles west of New Washington, Ohio.

§ 3.10–35 Louisville Marine Inspection Zone.

(a) The Louisville Marine Inspection Office is in Louisville, Kentucky.

(b) The Louisville marine inspection zone boundary starts at 86°10′ W. longitude and 40°45′ N. latitude; thence southwest to and including Mount Vernon, Ind.; thence southeast to, but not including, Scottsville, Ky.; thence due east to the Virginia State line; thence northeast along the Virginia State line to Jenkins, Ky.; thence northwest to Cannel City, Ky.; thence northwest to Winchester, Ky.; thence northwest to Carrollton, Ky.; thence northwest to Anderson, Ind.; thence northwest to 86°10′ W. longitude and 40°45′ N. latitude.

§ 3.10–40 Memphis Marine Inspection Zone.

(a) The Memphis Marine Inspection Office is in Memphis, Tennessee.

(b) The Memphis marine inspection zone boundary starts at 38°30′ N. latitude and 109° W. longitude, on the Utah, Colorado State line and runs due east to, but not including, LaCrosse, Kans.; thence east to, but not including, McPherson, Kans.; thence southeast to, but not including, Greenfield, Mo.; thence southeast to, but not including, Springfield, Mo.; thence east to, but not including, Cabool, Mo.; thence northeast to, but not including, Licking, Mo.; thence east to, but not including, Oak Ridge, Mo.; thence southeast to and including Benton, Mo.; thence south to and including Sikeston, Mo.; thence east to and including Bardwell, Ky.; thence southeast to 34° N. latitude and 88° W. longitude; thence due west along 34° N. latitude to the Oklahoma, Arkansas State line; thence due south to the Red River; thence west, north, and west along the Oklahoma, Texas State line to the New Mexico State line; thence due north along the New Mexico, Oklahoma State line to 37° N. latitude; thence due west along the Colorado, New Mexico State line to 109° W. longitude; thence due north along the Utah, Colorado State line to 38°30′ N. latitude.

§ 3.10–45 Nashville Marine Inspection Zone.

(a) The Nashville Marine Inspection Office is in Nashville, Tennessee.

(b) The Nashville marine inspection zone boundary starts at 88° W. longitude and 34° N. latitude; thence due east to the Georgia, Alabama State line; thence northwest to the Tennessee, Alabama State line; thence north and east to the North Carolina State line; thence following the Tennessee, North Carolina State line; thence west along the Tennessee, Virginia State line to the Kentucky State line; thence northeast along the Kentucky, Virginia State line to 36°45′ N. latitude; thence due west to and including Scottsville, Ky., and continuing west to, but not including, Bardwell, Ky.; thence southeast to 88° W. longitude and 34° N. latitude.

§ 3.10–50 Pittsburgh Marine Inspection Zone.

(a) The Pittsburgh Marine Inspection Office is in Pittsburgh, Pennsylvania.

(b) The Pittsburgh marine inspection zone boundary starts at 41° N. latitude and 79° W. longitude; thence due south to the junction of the Pennsylvania, Maryland State line; thence west and south along the Pennsylvania, Maryland, State line to Fairfax, W. Va.; thence northwest to, and including Fairmont, W. Va.; thence northwest to, but not including Dam No. 13, Ohio River (about 3½ miles west of Wheeling, W. Va.); thence continuing in a straight line to 41° N. latitude and 81°40′ W. longitude; thence due east to 79° W. longitude.

NOTE: Notwithstanding the foregoing, factory inspections at the town of Alliance, Ohio, shall be conducted by marine inspectors assigned from the office of the Officer in Charge, Marine Inspection at Cleveland, Ohio, rather than from the office of the Officer in Charge, Marine Inspection, Pittsburgh, Pa.

§ 3.10–55 Cairo Captain of the Port.

(a) The Cairo Captain of the Port Office is in Cairo, Illinois.

(b) The Cairo Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Upper Mississippi River from Mile 0.0 to Mile 7.0, an of the Ohio River from Mile 977.0 to Mile 981.0.

§ 3.10–60 Cincinnati Captain of the Port.

(a) The Cincinnati Captain of the Port Office is in Cincinnati, Ohio.

(b) The Cincinnati Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Ohio River from Mile 466.0 to Mile 474.0.

§ 3.10–65 Dubuque Captain of the Port.

(a) The Dubuque Captain of the Port Office is in Dubuque, Iowa.

(b) The Dubuque Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Upper Mississippi River from Mile 579.0 to Mile 584.0.

§ 3.10–70 Huntington Captain of the Port.

(a) The Huntington Captain of the Port Office is in Huntington, West Virginia.

(b) The Huntington Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Ohio River from Mile 304.0 to Mile 324.0.

§ 3.10–75 Louisville Captain of the Port.

(a) The Louisville Captain of the Port Office is in Louisville, Kentucky.

(b) The Louisville Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Ohio River from Mile 601.0 to Mile 611.0.

§ 3.10–80 Memphis Captain of the Port.

(a) The Memphis Captain of the Port Office is in Memphis, Tennessee.

(b) The Memphis Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Lower Missisippi River from Mile 731.0 to Mile 733.0, and of the Tennessee Chute, and of Wolf River from Mile 0.0 to Mile 4.0.

§ 3.10–85 Nashville Captain of the Port.

(a) The Nashville Captain of the Port Office is in Nashville, Tenn.

(b) The Nashville Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Cumberland River from Mile 182.0 to Mile 194.0.

§ 3.10–90 Pittsburgh Captain of the Port.

(a) The Pittsburgh Captain of the Port Office is in Pittsburgh, Pa.

(b) The Pittsburgh Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Ohio River from Mile 0.0 to Mile 19.0, of the Alleghany River from Mile 0.0 to Mile 9.0, of the Monongahela River from Mile 0.0 to Mile 20.0, and of the Youghiogheny River from Mile 0.0 to Mile 3.0.

§ 3.10–95 St. Louis Captain of the Port.

(a) The St. Louis Captain of the Port Office is in St. Louis, Mo.

(b) The St. Louis Captain of the Port area comprises all navigable waters of the United States and contiguous land areas of the Upper Mississippi River from Mile 168.0 to Mile 205.0.

Subpart 3.15—Third Coast Guard District

§ 3.15–1 Third district.

(a) The District Office is in New York, N.Y.

(b) The Third Coast Guard District shall comprise the counties of Orleans, Franklin, Grand Isle, Chittenden, and Addison in Vermont; Connecticut, but not including the waters of Beach Pond in New London County; Watch Hill Light Station in Rhode Island; that portion of Massachusetts containing the waters of Congamond Lakes in Hampden County; New York, except that part north of latitude 42° N. and west of longitude 74°39′ W.; New Jersey; Pennsylvania east of longitude 79° W.; Delaware, including Fenwick Island, the ocean area between a line from Watch Hill Light due south to Montauk Point Light, thence 112° T and a line from the coastal end of the Third-Fifth Coast Guard District boundary, thence 122° T.

§ 3.15–10 New York Marine Inspection Zone.

(a) The New York Marine Inspection Office is in New York, N.Y.

(b) The New York marine inspection zone boundary starts at the southern bank of the Manasquan River, N.J.; thence along the southern boundary of Monmouth and Mercer Counties to the Delaware River; thence north along the east bank of the Delaware River to Tusten, N.Y.; thence due east to the New York, Connecticut State line; thence in a southerly direction along the Connecticut-New York State line to its end on Long Island Sound. All of Long Island, including the suburbs of New York thereon and the islands to and including Little Gull Island, and its surrounding waters, are under the jurisdiction of the New York marine inspection office.

§ 3.15–15 Albany Marine Inspection Zone.

(a) The Albany Marine Inspection Office is in Albany, N.Y.

(b) The Albany marine inspection zone boundary starts at the junction of the Massachusetts, Connecticut, and New York State lines; thence in a southerly direction along the New York-Connecticut State line to a point at approximately 41°33′ N. latitude, 73°32.5′ W. longitude (this point is further defined by the place where the northern boundary of the New York marine inspection district crosses the New York-Connecticut State line and is the junction of the New York, Albany, and New London districts); thence due west to Tusten, N.Y.; thence in a northwesterly direction along the east bank of the Delaware River to 42° N. latitude; thence due east to 74°40′ W. longitude; thence due north to the Canadian border; thence east along the Canadian border to the northeast corner of the Orleans County line in Vermont; thence following the eastern and southern boundary of Orleans, Franklin, Chittenden, and Addison County lines to the Vermont-New York State line; thence south along the Vermont-New York State line to the junction of the Massachusetts, Connecticut, and New York State lines.

§ 3.15–20 New London Marine Inspection Zone.

(a) The New London Marine Inspection Office is in New London, Conn.

(b) The New London marine inspection zone boundary starts at the Connecticut-New York State line on Long Island Sound; thence north, east, including the waters of Congamond Lakes, and south, excluding the waters of Beach Pond, along the Connecticut State line to Westerly, R.I.; thence in a southerly direction along the east shore of the Pawcatuck River to Watch Hill, R.I.; thence due south to the northeasterly end of, but not including any part of Long Island. All the islands along the Connecticut shore line between the Connecticut-New York State line and the Connecticut-Rhode Island State line, including Fishers Island, are under the jurisdiction of the New London marine inspection office.

§ 3.15–25 Philadelphia Marine Inspection Zone.

(a) The Philadelphia Marine Inspection Office is in Philadelphia, Pa.

(b) The Philadelphia marine inspection zone boundary starts at the southeastern boundary of Monmouth County, N.J., on the southern bank of, but not including the waters of the Manasquan River; thence following the southern boundary of Monmouth and Mercer Counties to the Delaware River; thence north following the course of and including all the waters of the Delaware River until it meets the New York State line; thence west along the New York-Pennsylvania State line to 79° W. longitude; thence due south to the Pennsylvania-Maryland State line; thence east to the junction of the Maryland-Delaware State line; thence south and east along the Maryland-Delaware State line to the sea.

§ 3.15–55 New London Captain of the Port.

(a) The New London Captain of the Port Office is in New London, Conn.

(b) The New London Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 72°04′30″ W. meridian, on the south a line extending through New London Harbor Light and Eastern Point, on the west the 72°06′30″ W. meridian, and on the north the parallel extending through Ice House Light.

§ 3.15–60 New York Captain of the Port.

(a) The New York Captain of the Port Office is located in New York, N.Y.

(b) The New York Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Navesink South Tower through Ambrose Lightship to the 73°39′00″ W. meridian, 40°35′00″ N. parallel; thence due north to 41°00′00″ N. parallel; thence due west to the 74°10′00″ W. meridian; thence southwesterly to a point located at 40°30′00″ N., 74°30′00″ W.; thence due south to the 40°23′48″ N. parallel; thence due east to Navesink South Tower.

§ 3.15–65 Philadelphia Captain of the Port.

(a) The Philadelphia Captain of the Port Office is located in Philadelphia, Pa.

(b) The Philadelphia Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Hereford Inlet Light to the south tower at Indian River Inlet; thence northwesterly to a point on the Delaware-Maryland boundary at 39° 20′00″ N., thence northerly along Delaware-Maryland boundary to a point at 39°35′00″ N., thence northeasterly to a point at 40°20′00″ N., 74°50′00″ W.; thence east to the 74°40′00″ W. meridian; thence south to the 40°07′30″ N., parallel; thence southwesterly to a point at 39°35′00″ N., 75°20′00″ W.; thence southeasterly to a point at 39°20′00″ N., 74°55′00″ W.; thence south-southeasterly to Hereford Inlet Light.

Subpart 3.25—Fifth Coast Guard District

§ 3.25–1 Fifth district.

(a) The District Office is in Portsmouth, Va.

(b) The Fifth Coast Guard District shall comprise Maryland, Virginia, District of Columbia, and North Carolina; and the ocean between a line from the coastal end of the Third-Fifth Coast Guard District boundary, thence 122° T, and a line from the coastal end of the Fifth-Seventh Coast Guard District boundary, thence 122° T.

§ 3.25–10 Portsmouth Marine Inspection Zone.

(a) The Portsmouth Marine Inspection Office is in Portsmouth, Va.

(b) The Portsmouth marine inspection zone boundary starts at the sea and follows the Virginia-Maryland State line to a point 37°57′.2 N. latitude, 76°03′ W. longitude on Chesapeake Bay; thence to a point 37°56′.5 N. latitude, 76°10′.5 W. longitude; thence to a point 37°55′ N. latitude, 76°16′.8 W. longitude; thence to a point 37°55′ N. latitude, 76°28′.2 W. longitude; thence to a point 38°19′.5 N. latitude, 77°25′.2 W. longitude; thence to a point 39°06′ N. latitude, 78°30′ W. longitude, thence southerly along the western boundary of Virginia to its junction with the Tennessee State line; thence eastward along the Virginia, Ten-

nessee and North Carolina boundary lines to and including all of Kerr (Buggs Island) Lake in North Carolina; thence eastward to the west bank of the Chowan River; thence southerly along the west bank of the Chowan River to a point 36° 00′ N. latitude, 76°41′ W. longitude; thence generally southerly and easterly along the border of Washington, Beaufort and Hyde Counties to a point 35°37′ N. latitude, 76°32′ W. longitude; thence easterly to a point 35°37′ N. latitude, 75° 40′ W. longitude; thence generally southwesterly to a point 35°01′.5 N. latitude, 76°20′ W. longitude; thence easterly to a point 35°01′.5 N. latitude, 76°10′ W. longitude; thence southeasterly to the sea.

§ 3.25–15 Baltimore Marine Inspection Zone.

(a) The Baltimore Marine Inspection Office is in Baltimore, Md.

(b) The Baltimore marine inspection zone boundary starts at 75°00′ W. longitude at the sea on the Delaware coast and follows the Delaware, Maryland State line west and north to the junction of the Delaware, Maryland and Pennsylvania State lines; thence due west along the Pennsylvania-Maryland State line until it meets the West Virginia State line; thence south to the Potomac River; thence eastward along the Potomac River to the Maryland, Virginia State lines; thence south and west along the Virginia-West Virginia State line to a point 39°06′ N. latitude, 78°30′ W. longitude; thence to a point 38°19′.5 N. latitude, 77°25′.2 W. longitude; thence to a point 37°55′ N. latitude, 76°28′.2 W. longitude; thence to a point 37°55′ N. latitude, 76°16′.8 W. longitude; thence to a point 37°56′.5 N. latitude, 76°10′.5 W. longitude; thence to a point 37°57′.2 N. latitude, 76°03′ W. longitude on Chesapeake Bay; thence along the Maryland-Virginia State line to the sea.

§ 3.25–20 Wilmington Marine Inspection Zone.

(a) The Wilmington Marine Inspection Office is in Wilmington, N.C.

(b) The Wilmington marine inspection zone boundary starts from the sea northwesterly to a point 35°01′.5 N. latitude, 76°10′ W. longitude; thence westerly to a point 35°01′.5 N. latitude, 76°20′ W. longitude; thence northeasterly to a point 35°37′ N. latitude, 75°40′ W. longitude; thence westerly to a point 35°37′ N. latitude, 76°32′ W. longitude; thence north and westerly along the border of Hyde, Beaufort and Washington Counties to a point 36°00′ N. latitude, 76°41′ W. longitude; thence northerly along the west bank of the Chowan River to the North Carolina-Virginia State boundary; thence along this boundary to and excluding Kerr (Buggs Island) Lake in North Carolina to the North Carolina, Tennessee State boundary to its intersection with the North Carolina-Georgia State boundary; thence along the North Carolina, Georgia, and South Carolina State boundaries to the sea.

§ 3.25–55 Baltimore Captain of the Port.

(a) The Baltimore Captain of the Port Office is in Baltimore, Md.

(b) The Baltimore Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 76°15′00″ W. meridian; on the south the 38°53′30″ N. parallel, on the west the 76°40′00″ W. meridian and on the north the 39°18′00″ N. parallel.

§ 3.25–60 Norfolk Captain of the Port.

(a) The Norfolk Captain of the Port Office is in Portsmouth, Va.

(b) The Norfolk Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Cape Charles Light in a south-southwesterly direction to a point located at 36°45′00″ N., 76°00′00″ W., thence west to 76°49′00″ W., thence north to 37°15′00″ N., thence in an easterly direction to Cape Charles Light.

§ 3.25–65 Wilmington Captain of the Port.

(a) The Wilmington Captain of the Port Office is in Wilmington, N.C.

(b) The Wilmington Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 77°55′00″ W. meridian, on the south the 33°50′00″ N. parallel, on the west the 78°02′00″ W. meridian, and on the north the 34°17′00″ N. parallel.

Subpart 3.35—Seventh Coast Guard District

§ 3.35–1 Seventh district.

(a) The District Office is in Miami, Fla.

(b) The Seventh Coast Guard District shall comprise South Carolina; Florida and Georgia, except that part of Florida west of the east bank of the Apalachicola River and part of Georgia west of the east bank of the Jim Woodruff Reservoir and the east bank of the Flint River up-stream to Montezuma, Georgia and south and west of a line between Montezuma and West Point, Ga.; Panama Canal Zone; all of the island possessions of the United States pertaining to Puerto Rico and the Virgin Islands; all of the United States naval reservations in the islands of the West Indies and on the north coast of South America; and the ocean area between a line from the coastal end of the Fifth-Seventh Coast Guard District boundary, thence 122° T, and a line from the coastal end of the Seventh-Eighth Coast Guard District boundary, thence 193° T; and the ocean area bounded by a line from the border between Guatemala and Mexico on the Pacific Coast (14°38′ N., 92°19′ W.) southwesterly to latitude 5° S., longitude 110° W., thence due east to the Coast of South America.

§ 3.35–10 Miami Marine Inspection Zone.

(a) The Miami Marine Inspection Office is in Miami, Fla.

(b) The Miami marine inspection zone boundary starts at sea at 28° N. latitude and runs due west to 81°30′ W. longitude; thence due south to the Gulf of Mexico. All of the Florida Keys to and including the Dry Tortugas area are under the jurisdiction of the Miami marine inspection office.

§ 3.35–15 Charleston Marine Inspection Zone.

(a) The Charleston Marine Inspection Office is in Charleston, S.C.

(b) The Charleston marine inspection zone boundary comprises the entire State of South Carolina except the ports and navigable waters of the Savannah River.

§ 3.35–20 Jacksonville Marine Inspection Zone.

(a) The Jacksonville Marine Inspection Office is in Jacksonville, Fla.

(b) The Jacksonville marine inspection zone comprises that part of the State of Florida south of the Georgia, Florida State line, including the ports and navigable waters of the St. Marys River, and east of a line drawn from the Georgia-Florida State line at 83° W. longitude and running 155° to a point at 28° N. latitude and 81°30′ W. longitude, and north of a line running due east to the sea from 28° N. latitude and 81° 30′ W. longitude.

§ 3.35–25 San Juan Marine Inspection Zone.

(a) The San Juan Marine Inspection Office is in San Juan, Puerto Rico.

(b) The San Juan marine inspection zone comprises Puerto Rico and the Virgin Islands.

§ 3.35–30 Savannah Marine Inspection Zone.

(a) The Savannah Marine Inspection Office is in Savannah, Georgia.

(b) The Savannah marine inspection zone comprises the entire State of Georgia except that part of Georgia west of the east bank of the Jim Woodruff Reservoir and the east bank of the Flint River up stream to Montezuma, Ga., and south and west of a line between Montezuma and West Point, Ga.; including the ports and navigable waters of the Savannah River and excepting the ports and navigable waters of the St. Marys River.

§ 3.35–35 Tampa Marine Inspection Zone.

(a) The Tampa Marine Inspection Office is in Tampa, Fla.

(b) The Tampa marine inspection zone comprises the land masses, inland and territorial waters of the State of Florida, as well as artificial islands in the Gulf of Mexico, which are south of the Florida-Georgia State line; east of a line following the east shore of the Apalachicola River from the Florida-Georgia State line to the Gulf of Mexico and thence along a line running 193° T. into the Gulf of Mexico; and west of a line drawn from the Florida-Georgia State line at 83° W. longitude and running 155° to a point at 28° N. latitude and 81°30′ W. longitude and thence due south to the Gulf of Mexico.

§ 3.35–55 Charleston Captain of the Port.

(a) The Charleston Captain of the Port Office is in Charleston, S.C.

(b) The Charleston Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 32°57'00" N., 80°00'00" W., east to 79°52'00" W. meridian; thence southeasterly to a point at 32°45'00" N., 79°-45'00" W.; thence southwesterly to a point at 32°41'00" N., 79°49'00" W., thence northwesterly to a point at 32°-45'00" N., 80°00'00" W., thence north to the point of beginning.

§ 3.35–60 Jacksonville Captain of the Port.

(a) The Jacksonville Captain of the Port Office is in Jacksonville, Fla.

(b) The Jacksonville Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 30°45'00" N., 81°48'00" W., east to the 81°22'00" W. meridian; thence south-southeasterly to a point at 29°51'00" N., 81°15'00" W., thence west to the 81°48'-00" W. meridian; thence north to the point of beginning.

§ 3.35–65 Key West Captain of the Port.

(a) The Key West Captain of the Port Office is in Key West, Fla.

(b) The Key West Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 81°44'00" W. meridian; on the south the 24°27'00" N. parallel; on the west the 81°55'00" W. meridian; and on the north the 24°39'00" N. parallel.

§ 3.35–70 Miami Captain of the Port.

(a) The Miami Captain of the Port Office is in Miami, Fla.

(b) The Miami Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 26°50'00" N., 80°10'00" W., east to the 79°54'00" W. meridian; thence south-southwesterly to a point at 25°30'00" N., 80°02'00" W.; thence west to the 80°21'-00" W. meridian; thence north-northeasterly to the point of beginning.

§ 3.35–75 San Juan Captain of the Port.

(a) The San Juan Captain of the Port Office is in San Juan, Puerto Rico.

(b) The San Juan Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the United States possessions of Puerto Rico and Virgin Islands.

§ 3.35–80 Savannah Captain of the Port.

(a) The Savannah Captain of the Port Office is in Savannah, Ga.

(b) The Savannah Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 32°10'00" N., 81°10'00" W., east to the 81°08'00" W. meridian; thence south to the 32°08'00" N. parallel; thence east to the 80°47'30" W. meridian; thence south to the 31°59'00" N. parallel; thence west to the 81°09'00" W. meridian; thence north to the 32°08'00" N. parallel; thence west to the 81°10'00" W. meridian; thence north to the point of beginning.

§ 3.35–85 Tampa Captain of the Port.

(a) The Tampa Captain of the Port Office is in Tampa, Fla.

(b) The Tampa Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 28°03'00" N., 82°49'00" W. east to the 82°20'00" W. meridian; thence south to the 27°27'00" N. parallel; thence west to the 82°43'00" W. meridian; thence northwesterly to a point at 27°36'00" N., 82°56'00" W.; thence northeasterly to the point of beginning.

Subpart 3.40—Eighth Coast Guard District

§ 3.40–1 Eighth district.

(a) The District Office is in New Orleans, La.

(b) The Eighth Coast Guard District shall comprise New Mexico, Texas and Louisiana; those parts of Alabama, Mississippi and Arkansas south of latitude 34° N.; and that part of Florida west of the east bank of the Apalachicola River and that part of Georgia west of the east bank of the Jim Woodruff Reservoir and the east bank of the Flint River upstream to Montezuma, Ga., and south and west of a line between Montezuma and West Point, Ga.; the water of the Gulf of Mexico westward of a line from the coastal end of the Seventh-Eighth Coast Guard District boundary thence 193° T.

§ 3.40–10 New Orleans Marine Inspection Zone.

(a) The New Orleans Marine Inspection Office is in New Orleans, La.

(b) The New Orleans marine inspection zone comprises land masses, inland and/or territorial waters of the States of Mississippi, Arkansas, Louisiana, and Texas, as well as artificial islands in the Gulf of Mexico, which are south of 34° N. latitude; east of a line following the Oklahoma, Arkansas State line from 34° N. latitude to the Red River, thence west along the Red River to 94°37' W. longitude, thence southeast to and including Keachie, La., thence to and including Peason, La., thence to and including Otis, La., thence to and including Lafayette, La., thence due south along 92° W. longitude into the Gulf of Mexico; and west of a line drawn from 34° N. latitude and 88°45' W. longitude south to and across the Mississippi Sound touching the west tip of Cap Island, and thence running 155° T. into the Gulf of Mexico.

§ 3.40–15 Corpus Christi Marine Inspection Zone.

(a) The Corpus Christi Marine Inspection Office is in Corpus Christi, Tex.

(b) The Corpus Christi marine inspection zone comprises the land masses, inland and territorial waters of the State of Texas, as well as the artificial islands in the Gulf of Mexico, which are north of the International Boundary between the United States and Mexico; east and south of a line starting at the International Boundary and the Rio Grande River, thence north and east along the New Mexico, Texas State line to the southeast corner of the State of New Mexico, thence southeasterly to, but not including, Wharton, Tex., and west of a line from Wharton, Tex.; south to the Coast line at 96°05' W. longitude, thence to a point 28° N. latitude and 95°30' W. longitude, thence due south into the Gulf of Mexico.

§ 3.40–20 Galveston Marine Inspection Zone.

(a) The Galveston Marine Inspection Office is in Galveston, Tex.

(b) The Galveston marine inspection zone comprises the land masses, inland and territorial waters of the State of Texas, as well as the artificial islands in the Gulf of Mexico, which are south of a line drawn from, but not including Wharton, Tex., to and including Anahuac, Tex., thence southeast to High Island, Tex., thence to a point 29° N. latitude and 94° W. longitude; west of a line drawn south from 29° N. latitude and 94° W. longitude into the Gulf of Mexico; and east of a line drawn south from Wharton, Tex., to the Coast line at 96°05' W. longitude, thence to a point 28° N. latitude and 95°30' W. longitude, thence due south into the Gulf of Mexico.

§ 3.40–25 Houston Marine Inspection Zone.

(a) The Houston Marine Inspection Office is in Houston, Tex.

(b) The Houston marine inspection zone comprises the land masses and inland waters within the State of New Mexico and that portion of the State of Texas south of a line following the Texas, Oklahoma State line drawn from its junction with the State of New Mexico to the east, south, and easterly along the North bank of the Red River to 96°55' W. longitude; west of a line drawn from 96°55' W. longitude on the north bank of the Red River southeast to, but not including, McKinney, Tex., thence south following the east bank of the Trinity River to, but not including Anahuac, Tex.; and north of a line drawn from Anahuac, Tex.; to and including Wharton, Tex., thence northwesterly to the southeast corner of the State of New Mexico at the New Mexico-Texas State line.

§ 3.40–30 Mobile Marine Inspection Zone.

(a) The Mobile Marine Inspection Office is in Mobile, Ala.

(b) The Mobile marine inspection zone comprises those portions of the land masses, inland and territorial waters of the States of Mississippi, Alabama, Florida and Georgia, as well as the artificial islands in the Gulf of Mexico, south of 34° N.; east of a line starting at 34° N., 80°45' W., and drawn south to and across the Mississippi Sound touching the west tip of Cat Island, and thence running 155° T. into the Gulf of Mexico, and west of a line starting 34° N. and drawn south along the Alabama, Georgia State line to West Point, Ga., thence to Montezuma, Ga., downstream

along the east bank of the Flint River, the east bank of the Jim Woodruff Reservoir, the east bank of the Apalachicola River to its mouth, and thence running 193° T. into the Gulf of Mexico.

§ 3.40–35 Port Arthur Marine Inspection Zone.

(a) The Port Arthur Marine Inspection Office is in Port Arthur, Tex.

(b) The Port Arthur marine inspection zone comprises the land masses, inland and territorial waters of the States of Texas and Louisiana, as well as artificial islands in the Gulf of Mexico, south of the north bank of the Red River; east of a line starting at a point on the north bank of the Red River at 96°55′ W. longitude and drawn southeast to and including McKinney, Tex., thence south following the east bank of the Trinity River to, but not including, Anahuac, Tex., thence southeasterly to and including High Island, Tex., thence to a point 29° N. latitude and 94° W. longitude, and thence south along 94° W. longitude into the Gulf of Mexico.

§ 3.40–55 Corpus Christi Captain of the Port.

(a) The Corpus Christi Captain of the Port Office is in Corpus Christi, Tex.

(b) The Corpus Christi Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 96°55′00″ W. meridian; on the south the 27°35′00″ N. parallel; on the west the 97°35′00″ W. meridian; and on the north the 28°00′00″ N. parallel.

§ 3.40–60 Galveston Captain of the Port.

(a) The Galveston Captain of the Port Office is in Galveston, Texas.

(b) The Galveston Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 94°30′00″ W. meridian, on the south the 29°10′00″ N. parallel, on the west the 95°00′00″ W. meridian, and on the north 29°50′00″ N. parallel.

§ 3.40–65 Houston Captain of the Port.

(a) The Houston Captain of the Port Office is in Galena Park, Texas.

(b) The Houston Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 95°00′00″ W. meridian; on the south the 29°40′00″ N. parallel; on the west the 95°30′00″ W. meridian; and on the north the 29°50′00″ N. parallel.

§ 3.40–70 Mobile Captain of the Port.

(a) The Mobile Captain of the Port Office is in Mobile, Ala.

(b) The Mobile Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 87°10′00″ W. meridian, on the south the 30°05′00″ N. parallel, on the west the 88°10′00″ W. meridian, and on the north the 31°00′00″ N. parallel.

§ 3.40–75 New Orleans Captain of the Port.

(a) The New Orleans Captain of the Port Office is in New Orleans, La.

(b) The New Orleans Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the south the 28°50′00″ N. parallel, on the west the 91°20′00″ W. meridian, on the north the 31°00′00″ N. parallel to the Louisiana boundary line, thence south along said boundary line to the coast, thence east-southeasterly to a point located at 30°00′00″ N., 88°50′00″ W., then south to 28°50′00″ N.

§ 3.40–80 Sabine Captain of the Port.

(a) The Sabine Captain of the Port Office is in Sabine, Tex.

(b) The Sabine Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 93°10′00″ W. meridian, on the south the 29°30′00″ N. parallel, on the west the 94°10′00″ W. meridian, and on the north the 30°25′00″ N. parallel.

§ 3.40–85 Port Isabel Captain of the Port.

(a) The Port Isabel Captain of the Port Office is in Port Isabel, Tex.

(b) The Port Isabel Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 97°00′00″ W. meridian, on the south the 26°00′00″ N. parallel, on the west the 97°50′00″ W. meridian, and on the north the 26°25′00″ N. parallel.

Subpart 3.45—Ninth Coast Guard District

§ 3.45–1 Ninth district.

(a) The District Office is in Cleveland, Ohio.

(b) The Ninth Coast Guard District shall comprise Michigan, New York north of latitude 42° N. and west of longitude 74°39′ W.; Pennsylvania north of latitude 41° N. and west of longitude 79° W.; those parts of Ohio and Indiana north of latitude 41° N.; Illinois north of latitude 41° N. and east of longitude 90° W.; Wisconsin, except that part south of latitude 46°20′ N. and west of longitude 90° W.; and Minnesota north of latitude 46°20′ N.

§ 3.45–5 Cleveland Marine Inspection Zone.

(a) The Cleveland Marine Inspection Office is in Cleveland, Ohio.

(b) The Cleveland marine inspection zone boundary starts on the Canadian border in Lake Erie at 82°25′ W. longitude; thence due south to 41° N. latitude; thence due east to 80° W. longitude; thence northwest to 80°17′ W. longitude on the Canadian border; thence west along the Canadian border to 82°25′ W. longitude.

NOTE: Notwithstanding the foregoing, factory inspections at the town of Alliance, Ohio, shall be conducted by marine inspectors assigned from the office of the Officer in Charge, Marine Inspection at Cleveland, Ohio, rather than from the office of the Officer in Charge, Marine Inspection at Pittsburgh, Pa.

§ 3.45–10 Buffalo Marine Inspection Zone.

(a) The Buffalo Marine Inspection Office is in Buffalo, N.Y.

(b) The Buffalo marine inspection zone boundary starts at the Canadian border in Lake Erie at 80°17′ W. longitude; thence southeast to 41° N. latitude and 80° W. longitude; thence due east to 79° W. longitude; thence north to 42° N. latitude; thence east to 77°28′ W. longitude; thence due north to the Canadian border; thence west along the Canadian border to 80°17′ W. longitude.

§ 3.45–15 Chicago Marine Inspection Zone.

(a) The Chicago Marine Inspection Office is in Chicago, Illinois.

(b) The Chicago marine inspection zone boundary starts at the Illinois, Wisconsin State line and 90° W. longitude; thence due east to 84°45′ W. longitude; thence due south to 41° N. latitude; thence due west to 90° W. longitude; thence due north to the Illinois, Wisconsin State line.

§ 3.45–20 Detroit Marine Inspection Zone.

(a) The Detroit Marine Inspection Office is in Detroit, Michigan.

(b) The Detroit marine inspection zone boundary starts at 84°45′ W. longitude and 42° N. latitude; thence due east to the Canadian border; thence north along the Canadian border to 45° N. latitude; thence due west to 84°45′ W. longitude; thence due south to 42° N. latitude.

§ 3.45–25 Duluth Marine Inspection Zone.

(a) The Duluth Marine Inspection Office is in Duluth, Minnesota.

(b) The Duluth marine inspection zone boundary starts at the intersection of the Red River of the North and 46°20′ N. latitude; thence due east to 89° W. longitude; thence due north to 47°30′ N. latitude; thence northwesterly to the intersection of the Canadian border with 89°30′ W. longitude; thence westward along the Canadian border to its intersection with the Red River of the North, thence south to 46°20′ N. latitude, the place of the beginning.

§ 3.45–30 Ludington Marine Inspection Zone.

(a) The Ludington Marine Inspection Office is in Ludington, Michigan.

(b) The Ludington marine inspection zone boundary starts at 42°30′ N. latitude, 87° W. longitude; thence east to 84°45′ W.; thence north to 45° N.; thence northwesterly to 45°20′ N., 86°11′ W.; thence southwesterly to 44°30′ N., 87° W.; thence due south to 42°30′ N., 87° W., the place of the beginning.

§ 3.45–35 Milwaukee Marine Inspection Zone.

(a) The Milwaukee Marine Inspection Office is in Milwaukee, Wisconsin, with a sub-office in Manitowoc, Wis.

(b) The Milwaukee marine inspection zone boundary starts at 42°30′ N. latitude and 90° W. longitude; thence due east to 87° W.; thence due north to 44°30′ N.; thence northeasterly to 45°33′ N. 85°56′ W.; thence west to 45°33′ N., 88° W.; thence north to 46°20′ N.; thence due west to 90° W., thence south to the place of the beginning.

§ 3.45–40 Oswego Marine Inspection Zone.

(a) The Oswego Marine Inspection Office is in Oswego, N.Y.

(b) The Oswego marine inspection zone boundary starts at the Canadian border in Lake Ontario at 77°28′ W. longitude; thence due south to 42° N. latitude; thence due east to 74°40′ W. longitude; thence due north to the Canadian border; thence west and south along the Canadian border to 77°28′ W. longitude.

§ 3.45–45 St. Ignace Marine Inspection Zone.

(a) The St. Ignace Marine Inspection Zone is in St. Ignace, Mich.

(b) The St. Ignace marine inspection zone boundary starts at 46°20′ N. 89° W., thence east to 88° W.; thence south to 45°33′ N.; thence east to 45°33′ N. 85°56′ W.; thence southwesterly to 45°20′ N. 86°11′ W.; thence southeasterly to 45° N. 84°45′ W.; thence east to the Canadian border; thence northwesterly along the Canadian border to 89°30′ W.; thence 147° T. to 47°30′ N., 89° W.; thence south to 46°20′ N. 89° W.

§ 3.45–50 Toledo Marine Inspection Zone.

(a) The Toledo Marine Inspection Office is in Toledo, Ohio.

(b) The Toledo marine inspection zone boundary starts at 84°45′ W. longitude and 42° N. latitude; thence due south to 41° N. latitude; thence due east to 82°25′ W. longitude; thence due north to the Canadian border in Lake Erie; thence northwest along the Canadian border to 42° N. latitude; thence due west to 84°45′ W. longitude.

§ 3.45–55 Buffalo Captain of the Port.

(a) The Buffalo Captain of the Port Office is in Buffalo, New York.

(b) The Buffalo Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 78°46′15″ W. meridian, on the south the 42°48′00″ N. parallel, on the west the United States-Canadian International Boundary, and on the north the 43°04′00″ N. parallel.

§ 3.45–60 Chicago Captain of the Port.

(a) The Chicago Captain of the Port Office is in Chicago, Illinois.

(b) The Chicago Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 42°05′00″ N., 87°32′00″ W. southeasterly to a point located at 41°35′00″ N., 87°16′00″ W; thence west to the 88°-00′00″ W. meridian; thence north to the 42°05′00″ N. parallel; thence east to the point of beginning.

§ 3.45–65 Cleveland Captain of the Port.

(a) The Cleveland Captain of the Port Office is in Cleveland, Ohio.

(b) The Cleveland Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 41°27′00″ N., 81°30′00″ W. north to a point at 41°32′00″ N., 81°31′00″ W.; thence northwesterly to a point at 41°-33′30″ N., 81°51′00″ W.; thence south to the 41°27′00″ N. parallel; thence east to the point of beginning.

§ 3.45–70 Detroit Captain of the Port.

(a) The Detroit Captain of the Port Office is in Detroit, Mich.

(b) The Detroit Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: From the intersection of the 42°00′00″ N. parallel and the United States-Canadian Boundary west to 83°12′00″ W.; thence north to a point at 42°25′00″ N., 83°12′00″ W.; thence east to 82°55′00″ W., thence north to 42°45′00″ N.; thence east to 82°30′00″ W.; thence north to 43°02′45″ N.; thence east to the International Boundary; thence southerly along the International Boundary to point of beginning.

§ 3.45–75 Duluth Captain of the Port.

(a) The Duluth Captain of the Port Office is in Duluth, Minn.

(b) The Duluth Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 91°58′20″ W. meridian, on the south the 46°38′00″ N. parallel, on the west the 92°18′00″ W. meridian, and on the north the 46°48′00″ N. parallel.

§ 3.45–80 Milwaukee Captain of the Port.

(a) The Milwaukee Captain of the Port Office is in Milwaukee, Wis.

(b) The Milwaukee Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 87°43′00″ W. meridian, on the south the 42°50′40″ N. parallel, on the west the 88°00′00″ W. meridian, and on the north the 43°11′30″ N. parallel.

§ 3.45–85 Ludington Captain of the Port.

(a) The Ludington Captain of the Port Office is in Ludington, Mich.

(b) The Ludington Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 86°26′00″ W. meridian, on the south the 43°56′00″ N. parallel, on the west the 86°30′00″ W. meridian, and on the north the 43°58′00″ N. parallel.

§ 3.45–90 Oswego Captain of the Port.

(a) The Oswego Captain of the Port Office is in Oswego, N.Y.

(b) The Oswego Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 43°27′04″ N., 76°31′45″ W. northwesterly to a point in Lake Ontario at 43°-31′30″ N., 76°34′25″ W.; thence northeasterly to a point at 43°32′15″ N., 76°-32′20″ W.; thence southeasterly to a point at 43°27′42″ N., 76°29′41″ W.; thence southwesterly to the point of beginning.

§ 3.45–95 Sault Ste. Marie Captain of the Port.

(a) The Sault Ste. Marie Captain of the Port Office is in Sault Ste. Marie, Mich.

(b) The Sault Ste. Marie Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Detour Reef Light southeasterly to the United States-Canadian International boundary; thence northerly along that boundary to the 85°00′00″ W. meridian; thence south to the 46°10′00″ N. parallel; thence east to the 84°30′00″ W. meridian; thence southeasterly to Detour Reef Light.

§ 3.45–97 Toledo Captain of the Port.

(a) The Toledo Captain of the Port Office is in Toledo, Ohio.

(b) The Toledo Captain of the Port area comprises all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 41°35′00″ N., 83°38′00″ W. north to the Ohio-Michigan State Boundary; thence easterly along the Ohio-Michigan State Boundary to shore line; thence northeasterly to a point at 41°48′30″ N., 83°17′35″ W.; thence southeasterly to a point at 41°44′00″ N., 83°13′45″ W.; thence southwesterly to the 41°35′00″ N. parallel; thence west to the point of beginning.

Subpart 3.55—Eleventh Coast Guard District

§ 3.55–1 Eleventh district.

(a) The District Office is in Long Beach, Calif.

(b) The Eleventh Coast Guard District shall comprise Arizona; Clark County in Nevada; the southern part of California comprising the Counties of Santa Barbara, Kern, and San Bernardino, and all counties south thereof; and the ocean area bounded by a line from California coast at latitude 34°58′ N. (mouth of Santa Maria River) southwesterly to latitude 24°15′ N., longitude 134°40′ W.; thence southeasterly to latitude 5° S., longitude 110° W.; thence northeasterly to the border between Guatemala and Mexico on the Pacific Coast (14°38′ N., 92°19′ W.).

§ 3.55–10 Long Beach Marine Inspection Zone.

(a) The Long Beach Marine Inspection Office is in Long Beach, Calif., with a sub-office in San Pedro, Calif.

(b) The Long Beach marine inspection zone comprises the land masses and waters of the State of Arizona and Clark County in Nevada and also the land masses, inland and territorial

waters of that part of California which includes the counties of Santa Barbara, Kern, San Bernardino, and all counties south thereof with the exception of San Diego County, as well as all artificial islands subject to inspection on the Pacific Ocean due west thereof.

§ 3.55–15 San Diego Marine Inspection Zone.

(a) The San Diego Marine Inspection Office is in San Diego, Calif.

(b) The San Diego marine inspection zone comprises the land masses, inland and territorial waters of the State of California in San Diego County, as well as all artificial islands subject to inspection on the Pacific Ocean due west thereof.

§ 3.55–55 San Diego Captain of the Port.

(a) The San Diego Captain of the Port Office is in San Diego, Calif.

(b) The San Diego Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Point Loma Light north to 32°45'00" N., thence east to 117°05'00" W., thence south to 32°35'00" N., thence west to 117°08'00" W., thence in a northwesterly direction to Point Loma Light.

§ 3.55–60 Los Angeles Captain of the Port.

(a) The Los Angeles Captain of the Port Office is in Long Beach, Calif.

(b) The Los Angeles Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: On the south the 33°42'00" N. parallel, on the west the 118°18'00" W. meridian, on the north the 33°47'00" N. parallel, and on the east the 118°05'00" W. meridian.

Subpart 3.60—Twelfth Coast Guard District

§ 3.60–1 Twelfth district.

(a) The District Office is in San Francisco, Calif.

(b) The Twelfth Coast Guard District shall comprise Utah, Nevada, except Clark County; and the northern part of California comprising the counties of San Luis Obispo, Kings, Tulare, and Inyo, and all counties north thereof; and the ocean area bounded by a line from the California coast at latitude 34°58' N. (mouth of Santa Maria River), southwesterly to latitude 24°15' N., longitude 134°40' W., thence northwesterly to latitude 40° N., longitude 150° W., thence easterly to the California-Oregon State line.

§ 3.60–10 San Francisco Marine Inspection Zone.

(a) The San Francisco Marine Inspection Office is in San Francisco, Calif.

(b) The San Francisco marine inspection zone comprises the States of Utah, Nevada less Clark County, and all the State of California north of Santa Barbara, Kern, and San Bernardino Counties.

§ 3.60–55 San Francisco Captain of the Port.

(a) The San Francisco Captain of the Port Office is in San Francisco, Calif.

(b) The San Francisco Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from Point Reyes Light in a north-northeasterly direction to a point located at 38°16'00" N., 122°42'00" W., thence in a general northeasterly direction to 38°38'00" N., 121°24'00" W., thence in a south-southeasterly direction to 37°57'00" N., 121°12'00" W., thence in a southwesterly direction to 37°15'00" N., 121°54'00" W., thence in a northwesterly direction to Point Reyes Light.

Subpart 3.65—Thirteenth Coast Guard District

§ 3.65–1 Thirteenth district.

(a) The District Office is in Seattle, Wash.

(b) The Thirteenth Coast Guard District shall comprise Washington, Oregon, Idaho, and Montana; and the ocean area bounded by a line from California-Oregon state line westerly to latitude 40° N. longitude, 150° W., thence northeasterly to latitude 54°40' N., longitude 140° W., thence due east to the Canadian coast.

§ 3.65–10 Seattle Marine Inspection Zone.

(a) The Seattle Marine Inspection Office is in Seattle, Wash.

(b) The Seattle marine inspection zone comprises those portions of the States of Washington, Idaho, and Montana north of a line beginning at Cape Disappointment, Wash., and running in an easterly direction to and including Jordan, Mont.; thence continuing due east until this line touches the Montana, North Dakota State line; thence north along the Montana State line to the Canadian border; thence west along the Canadian border to the sea.

§ 3.65–15 Portland, Oreg. Marine Inspection Zone.

(a) The Portland, Oreg., Marine Inspection Office is in Portland, Oreg.

(b) The Portland marine inspection zone comprises the State of Oregon and those portions of the States of Washington, Idaho, and Montana south of a line beginning at Cape Disappointment, Wash., and running in an easterly direction to, but not including, Jordan, Mont.; thence continuing due east until this line touches the Montana-North Dakota State line.

§ 3.65–55 Portland Captain of the Port.

(a) The Portland Captain of the Port Office is in Portland, Oreg.

(b) The Portland Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point at 46°20'00" N., 123°05'00" W., southeasterly to a point at 46°00'00" N., 122°30'00" W., thence south to the 45°45'45" N. parallel; thence east to the 121°05'00" W. meridian; thence south to the 45°20'00" N. parallel; thence west to the 122°45'00" W. meridian; thence northwesterly to a point at 45°45'00" N., 123°05'00" W.; thence north to the 46°20'00" N. parallel. Additionally the following area in the vicinity of Astoria, Oreg.: All navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from the Columbia River Lightship northeasterly to a point at 46°20'00" N., 124°00'00" W.; thence east to the 123°15'00" W. meridian; thence south to the 46°05'00" N. parallel; thence west to the 123°56'00" W. meridian; and thence north-westerly to the Columbia River Lightship.

§ 3.65–60 Seattle Captain of the Port.

(a) The Seattle Captain of the Port Office is in Seattle, Wash.

(b) The Seattle Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point located at 47°00'00" N., 122°00'00" W., north to the United States-Canadian International Boundary line; thence west and southerly along said boundary line to a junction with the 123°20'00" W. meridian; thence south to the 47°00'00" N. parallel; thence east to the point of beginning.

Subpart 3.70—Fourteenth Coast Guard District

§ 3.70–1 Fourteenth district.

(a) The District Office is in Honolulu, Hawaii.

(b) The Fourteenth Coast Guard District shall comprise the State of Hawaii; and the Pacific Islands belonging to the United States south of latitude 40° N., and west of a line running from 40° N., 150° W. through latitude 5° S., 110° W.; and the ocean area west and south of a line from latitude 53°15' N., longitude 160° E. (Cape Shipunski), due south to latitude 40° N., thence due east to longitude 150° W., thence southeasterly through latitude 5° S., longitude 110° W.

§ 3.70–10 Honolulu Marine Inspection Zone.

(a) The Honolulu Marine Inspection Office is in Honolulu, Hawaii.

(b) The Honolulu marine inspection zone comprises the State of Hawaii.

§ 3.70–15 Guam Marine Inspection Zone.

(a) The Guam Marine Inspection Office is in Agana, Guam.

(b) The Guam marine inspection zone comprises the Territory of Guam.

§ 3.70–55 Honolulu Captain of the Port.

(a) The Honolulu Captain of the Port Office is in Honolulu, Hawaii.

(b) The Honolulu Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: On the east the 154°00'00" W. meridian, on the south the 18°00'00" N. parallel, on the west the 162°00'00" W. meridan, and on the north the 23°00'00" N. parallel.

§ 3.70–60 Guam Captain of the Port.

(a) The Guam Captain of the Port Office is in Agana, Guam.

(b) The Guam Captain of the Port area shall comprise all navigable waters of the United States and continguous land areas within the following boundaries: On the east the 145°00'00" E. meridian; on the south 13°11'00" N. parallel; on the west 144°34'00" E. meridian; and on the north 13°42'00" N. parallel.

Subpart 3.85—Seventeenth Coast Guard District

§ 3.85–1 Seventeenth district.

(a) The District Office is in Juneau, Alaska.

(b) The Seventeenth Coast Guard District shall comprise the State of Alaska; and the ocean area bounded by a line from the Canadian coast at latitude 54°40' N. due west to longitude 140° W., thence southwesterly to latitude 40° N., longitude 150° W., thence due west to longitude 160° E., thence due north to latitude 53°15' N. (Cape Shipunski), thence southeasterly to the southern terminus of the U.S.-Russian boundary at latitude 50°36' N., longitude 167° E., thence northeasterly along that boundary to the Arctic Ocean.

§ 3.85–10 Juneau Marine Inspection Zone.

(a) The Juneau Marine Inspection Office is in Juneau, Alaska, with a suboffice in Ketchikan, Alaska.

(b) The Juneau marine inspection zone comprises the State of Alaska.

§ 3.85–55 Ketchikan Captain of the Port.

(a) The Ketchikan Captain of the Port Office is in Ketchikan, Alaska.

(b) The Ketchikan Captain of the Port area shall comprise all navigable waters of the United States and contiguous land areas within the following boundaries: A line extending from a point at the junction of 54°40'00" N. and the United States-Canadian Boundary as indicated on USC&GS Chart 8102, easterly and northerly along the United States-Canadian Boundary to the 56°-00'00" N. parallel, thence west to the 134°00'00" W. meridian, thence south to the 54°40'00" N. parallel, and thence east to the point of beginning.

1. Section 67.50–5(a) is amended to read as follows:

§ 67.50–5 First Coast Guard District.

(a) *Description.* See § 3.05–1 of this chapter.

2. Section 67.50–10(a) is amended to read as follows:

§ 67.50–10 Third Coast Guard District.

(a) *Description.* See § 3.15–1 of this chapter.

3. Section 67.50–15(a) is amended to read as follows:

§ 67.50–15 Fifth Coast Guard District.

(a) *Description.* See § 3.25–1 of this chapter.

4. Section 67.50–20(a) is amended to read as follows:

§ 67.50–20 Seventh Coast Guard District.

(a) *Description.* See § 3.35–1 of this chapter.

5. Section 67.50–25(a) is amended to read as follows:

§ 67.50–25 Eighth Coast Guard District.

(a) *Description.* See § 3.40–1 of this chapter.

6. Section 67.50–30(a) is amended to read as follows:

§ 67.50–30 Ninth Coast Guard District.

(a) *Description.* See § 3.45–1 of this chapter.

7. Section 67.50–35(a) is amended to read as follows:

§ 67.50–35 Eleventh Coast Guard District.

(a) *Description.* See § 3.55–1 of this chapter.

8. Section 67.50–40(a) is amended to read as follows:

§ 67.50–40 Twelfth Coast Guard District.

(a) *Description.* See § 3.60–1 of this chapter.

(Sec. 92, 63 Stat. 503, as amended; 14 U.S.C. 92. Interpret or apply secs. 83, 633, 63 Stat. 500, 545, sec. 4, 67 Stat. 462; 14 U.S.C. 83, 633, 43 U.S.C. 1333)

Dated: October 26, 1961.

[SEAL] J. A. HIRSHFIELD,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[F.R. Doc. 61–10516; Filed, Nov. 2, 1961; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

PART 737—THE PATENT ROYALTY REVISION BOARD

PART 739—ADMINISTRATION OF A UNIFORM PATENT POLICY WITH RESPECT TO INVENTIONS MADE BY NAVAL PERSONNEL

Deletion of Parts

1. Parts 737 and 739 of Title 32 are deleted.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031)

By direction of the Secretary of the Navy.

[SEAL] ROBERT D. POWERS, Jr.,
Rear Admiral, U.S. Navy, Acting Judge Advocate General of the Navy.

OCTOBER 27, 1961.

[F.R. Doc. 61–10493; Filed, Nov. 2, 1961; 8:45 a.m.]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

[Canal Zone Order No. 58]

PART 4—OPERATION AND NAVIGATION OF PANAMA CANAL AND ADJACENT WATERS

Diving Operations; Industrial and Commercial; Recreational Skin Diving; Light, Flag

1. Effective upon publication in the FEDERAL REGISTER new § 4.304 is added added as follows:

§ 4.304 Diving operations; industrial and commercial; recreational skin diving; light, flag.

(a) When industrial or commercial diving operations are underway in any waters of the Canal Zone, a revolving red light shall be displayed from the diving barge or other craft serving the diver. The light shall be so mounted and of sufficient intensity as to be visible for not less than 1 mile by day and by night. Vessels approaching or passing an area where diving operations are underway shall reduce speed sufficiently to avoid creating a dangerous wash or wake.

(b) Recreational skin diving in waters of the Canal proper, including Gaillard Cut and the channel through Gatun and Miraflores Lakes and in the waters of all ship's anchorages, harbors, piers, and docks is prohibited unless authorized in writing by the respective port captain. Authorization shall not be given for skin diving at night. When recreational skin-diving activities are underway in any waters of the Canal Zone, a flag with a hoist or height of not less than 12 inches and a fly or length of not less than 18 inches and having a red background and a 3½-inch diagonal yellow stripe, running from the upper corner of the staff end of the flag to the lower corner of the outside end of the flag, shall be displayed from the mast of the craft serving the skin diver. Flags larger than the foregoing minimum dimensions shall preserve the same proportions. Vessels approaching an area where such skin-diving activities are underway shall reduce speed sufficiently to avoid creating a dangerous wash or wake.

(c) The provisions of this section do not apply to diving operations conducted in or about the locks by locks personnel.

(d) The provisions of this section do not apply to emergency situations in which prompt action is necessary to save or protect life or property and time does not permit compliance.

(Sec. 9 of title 2 of the Canal Zone Code; E.O. 9746, 3 CFR 554 (1943–48 Comp.); E.O. 10101, 3 CFR 296 (1949–53 Comp.); E.O. 10595, 3 CFR 58 (1955))

ELVIS J. STAHR, Jr.,
Secretary of the Army.

OCTOBER 26, 1961.

[F.R. Doc. 61–10507; Filed, Nov. 2, 1961; 8:47 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5—General Services Administration

PART 5—1—GENERAL

Subpart 5—1.3 General Policies

MISCELLANEOUS AMENDMENTS

Sections 5–1.315–2, 5–1.350, 5–1.350–1, and 5–1.350–2 are amended; §§ 5–1.350–3 and 5–1.350–4 are added, to read as follows:

§ 5–1.315–2 Policy.

Liquidated damages provisions shall not be used in contracts for supplies and services, other than construction, without the prior approval of the head of the procuring activity. In construction contracts, use shall be at the discretion of the contracting officer.

§ 5–1.350 Advance notices of contract award.

Advance notice of award shall be in writing over the signature of the contracting officer except as otherwise authorized in this § 5–1.350. When an advance notice of award is issued, it shall be followed as soon as possible by the formal contract document.

§ 5–1.350–1 Circumstances which warrant advance notice.

Advance notices of contract award may be issued by contracting officers under any one or more of the circumstances listed in this § 5–1.350–1 and § 5–1.350–3.

(a) A bid or offer is about to expire and it is necessary to issue an award notice promptly.

(b) Prompt action is necessary to afford the contractor an opportunity to secure necessary materials.

(c) Delivery or performance is urgent and cannot await release of formal contract documents.

(d) Contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries prior to actual starting of work.

(e) Prompt action is necessary to secure advance predelivery samples on contracts.

(f) Prompt action is necessary to permit contractors to proceed with preparation of necessary catalogs and other Federal Supply Schedule data.

(g) A prospective contractor requests advice, orally or in writing, as to whether he is to receive the award, and gives good and sufficient reasons to the satisfaction of the contracting officer, why advance notice is desirable.

(h) Other compelling circumstances exist, but only with the approval of the head of the procuring activity.

§ 5–1.350–2 Telegraphic notices.

When justified, contracting officers may issue telegraphic notices. Such notices shall contain in addition to the requirements set forth in § 5–1.350–4, a statement that written confirmation will follow. Such confirmation shall be issued without delay.

§ 5–1.350–3 Oral notices.

Oral notices shall not be used, except as authorized in this § 5–1.350–3. Such notices shall include a statement that written confirmation will follow, and such confirmation shall be issued without delay.

(a) Oral notices may be issued by DMS in negotiating the procurement of rubber and cordage fibers.

(b) Oral notices may be issued by TCS in negotiating the procurement of transportation and related services when the exigencies of the situation will not admit of delay, and when security regulations preclude telegraphic notice of award.

§ 5–1.350–4 Content of notice.

The content of advance notices of award may vary, but shall contain all of the essential elements to identify the award, such as: identification of invitation, description of item, quantity and price, and contract number assigned. Care should be taken to avoid the use of language which might in any way vary from the terms of the offer.

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 30, 1961.

JOHN L. MOORE,
Administrator.

[F.R. Doc. 61–10528; Filed, Nov. 2, 1961; 8:51 a.m.]

Chapter 50—Division of Public Contracts, Department of Labor

PART 50–202—MINIMUM WAGE DETERMINATIONS

Miscellaneous Chemical Products and Preparations Industry

Exceptions have been filed to the tentative decision in the determination of prevailing minimum wages for the miscellaneous chemical products and preparations industry. Some of the exceptions and the reasons supporting them repeat matters considered and rejected in the tentative decision. For the reasons indicated in the tentative decision, each of these exceptions is overruled. The remaining exceptions are discussed below.

The Chemical Specialties Manufacturers Association, Inc., contends that the statistical method used in determining the prevailing minimum wage for product group 1 was not applied in the case of product group 2. It argues that an application of the method employed in product group 1 to product group 2 would result in a prevailing minimum wage of $1.60 for product group 2 as of the survey period. A careful examination of the statistical method used in product group 1 shows it to be identical with that used in product group 2. In product group 1 the median for plants unweighted by their covered employment and that for plants weighted by their covered employment coincided at the $1.30 level. In product group 2, the unweighted plant median was $1.60, the minimum wage proposed by the Association, while the median of plants weighted by their covered employment was $1.74. The prevailing minimum wage was found to be $1.67, between the two medians.

That Association also excepts to the finding of an increase in prevailing minimum wages since the BLS survey period. The reasons for the exception deal with certain characteristics detracting from the weight of Government Exhibit 8, such as the differences shown in a cent-by-cent comparison between Government Exhibit 8 and Government Exhibit 5. Such characteristics were considered along with other evidence relating to the question of whether minimum wages increased in this industry subsequent to the BLS survey in making the finding excepted to, and the record as a whole sustains this finding. Also, there was no error, as is now contended, in attaching significance to the fact that the minimum wage increases arrived at by an application of the percentages of the increases in the average straight time hourly earnings shown in Government Exhibit 8 to the prevailing minimum wages as of the survey period show a close correspondence with proposed minimum wage increases. Cf. Electronic Component Parts Industry: tentative decision (May 13, 1961, 26 F.R. 4173); Manifold Business Forms Industry: tentative decision (June 30, 1961, 26 F.R. 5898).

The Adhesives Manufacturers Association of America excepts on the ground that the tentative decision discriminates against small producers. The record as a whole does not support this assertion. In this connection it should be noted that the minimum wage data in evidence indicate that small plants do not uniformly pay low minimum wages or that large plants uniformly pay high minimum wages. Nevertheless, it should be observed that the minimum wage practices of large plants contributing most to the employment in the industry have necessarily greater weight than small plants in establishing minimum wage practices which may be said to be prevailing for "persons employed" in the industry.

The Thompson-Hayward Chemical Co. filed an exception to the tentative decision, and proposed that $1.25 be found as the prevailing minimum wage for product group 1. However, its exception is not based upon evidence in the record, and it is therefore overruled.

Accordingly, pursuant to sections 1 and 4 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 38), 41 CFR Part 50–202 as recently revised (26 F.R. 9042) is hereby amended by making appropriate changes in § 50–202.11 containing the minimum wage determination for the chemical and related products industry and by adding thereto a new section, designated § 50–202.27, containing this minimum wage determination.

These amendments shall become effective December 4, 1961.

1. As amended, 41 CFR 50–202.11 reads as follows:

§ 50–202.11 Chemical and related products industry.

(a) *Definitions*—(1) *Industrial and refined basic chemical products branch.* The industrial and refined basic chemical products branch of the chemical and related products industry is defined as that branch of the industry which manufactures (including packaging) or furnishes any of the following products: Basic industrial inorganic chemicals; industrial organic chemicals; plastics materials; and compressed and liquefied gases.

(2) *Bone black, carbon black, and lamp black branch.* The bone black, carbon black, and lamp black branch of the chemical and related products industry is defined as that branch of the industry which manufactures (including packaging) or furnishes bone black, carbon black, and lamp black.

(3) *Exclusions.* Expressly excluded from the scope of the definitions of the branches of the chemical and related products industry are: Cyclic coal tar crudes; prepared photographic developers, fixers and toners; petroleum gases; synthetic rubber; synthetic fibers; explosives, ammunition, and fireworks; drugs and medicines; soap, glycerin, and synthetic organic detergents for household and institutional use; paints, varnishes, lacquers, japans, and enamels; floor and furniture wax and polish; and paint and varnish removers; inorganic color pigments; whiting, putty, and wood fillers; gum and wood chemicals; fertilizers; vegetable and animal oils and fats; printing inks; essential oils; perfumes, cosmetics, and other toilet preparations; gelatin; salt, specialty cleaning, polishing, and sanitation preparations (such as metal polishes, including automobile waxes; household, institutional and industrial plant insecticides, disinfectants and deodorants; and dry cleaning preparations); surface active agents, finishing agents, and sulfonated oils and assistants (such as wetting agents, emulsifiers, and penetrants); and agricultural chemicals (such as trace elements, soil conditioners, and ready-to-use agricultural pest control chemicals including insecticides, fungicides, and herbicides); adhesives, glues, mucilage, cements and sizes; household tints, dyes, and bleaches; bluings; writing inks; industrial compounds (such as boiler and heat insulating compounds, metal, oil and water treating compounds, and waterproofing compounds, and chemical supplies for foundries); and automotive chemicals (such as cooling system chemicals including antifreeze, synthetic base hydraulic fluids, and de-icing and defrosting compounds).

(b) *Minimum wages.* (1) The minimum wage for persons employed in the manufacture or furnishing of products of the industrial and refined basic chemical products branch of the chemical and related products industry shall be not less than that prescribed in § 50–202.2.

(2) The minimum wage for persons employed in the manufacture or furnishing of products of the bone black, carbon black, and lamp black branch of the chemical and related products industry shall be not less than $1.40 an hour.

(c) *Tolerances.* In the bone black, carbon black and lamp black branch of the chemical and related products industry beginners, as defined in this paragraph, may be employed for 320 hours at wages of not less than $1.35 an hour. In the industrial and refined basic chemicals branch of the chemical and related products industry in all States except Maryland, Virginia, North Carolina, South Carolina, Tennessee, Arkansas, Mississippi, Alabama, Georgia, Florida, and the District of Columbia, beginners may be employed for 320 hours at wages not less than $1.10 an hour. A beginner, for the purpose of this paragraph, is a person who has less than 320 hours of experience in the industry.

2. The new § 50–202.27 would read as follows:

§ 50–202.27 Miscellaneous chemical products and preparations industry.

(a) *Definitions.* The miscellaneous chemical products and preparations industry is defined as that industry which manufactures (including packaging) or furnishes the products in the product groups defined in subparagraphs (1) and (2) of this paragraph.

(1) *Product Group 1.* Specialty cleaning, polishing, and sanitation preparations (such as metal polishes, including automobile waxes; household, institutional and industrial plant insecticides, disinfectants and deodorants; and dry cleaning preparations); surface active agents, finishing agents, and sulfonated oils and assistants (such as wetting agents, emulsifiers, and penetrants); and agricultural chemicals (such as trace elements, soil conditioners, and ready-to-use agricultural pest control chemicals including insecticides, fungicides, and herbicides).

(2) *Product Group 2.* Adhesives, glues, mucilage, cements and sizes; gelatin (except dessert preparations); household tints, dyes, and bleaches; bluings; writing inks; essential oils; industrial compounds (such as boiler and heat insulating compounds, metal, oil and water treating compounds, and waterproofing compounds, and chemical supplies for foundries); automotive chemicals (such as cooling system chemicals including antifreeze, synthetic base hydraulic fluids, and de-icing and defrosting compounds); and evaporated salt (except byproduct salt).

(3) *Exclusions.* Products excluded from the groups defined in subparagraphs (1) and (2) of this paragraph are: Basic industrial inorganic and organic chemicals including industrial gases and basic plastic materials; bone black, carbon black, and lamp black, cyclic coal tar crudes; display fireworks; explosives and ammunition; fatty acids; fertilizers; fissionable materials; floor and furniture waxes and polishes; gum and wood chemicals; inorganic color pigments; paint and varnish removers; paints, varnishes, lacquers, japans and enamels; perfumes, cosmetics, and toilet preparations; petroleum crudes; prepared photographic developers, fixers and toners; printing ink; soap, glycerin, and synthetic organic detergents for household and institutional use; cleaners, washing compounds and other cleaning agents and compounds containing any soap and/or synthetic organic detergents; synthetic fibers; synthetic rubber; whiting, putty, and wood fibers; and solid fuel propellants.

(b) *Minimum wages*—(1) *Product group 1.* The minimum wage for persons employed in the manufacture (including packaging) or furnishing of the products in product group 1 of the miscellaneous chemical products and preparations industry shall be $1.42 per hour.

(2) *Product group 2.* The minimum wage for persons employed in the manufacture (including packaging) or furnishing of the products of product group 2 of the miscellaneous chemical products and preparations industry shall be $1.80 per hour.

Signed at Washington, D.C., this 30th day of October 1961.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 61–10529; Filed, Nov. 2, 1961; 8:51 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 73—BIOLOGIC PRODUCTS

Miscellaneous Amendments

Notice of proposed rule making, public rule making procedures and delay in effective date have been omitted as unnecessary in the issuance of the following clarifying amendments to the definitions contained in Part 73, § 73.1 of the Public Health Service Regulations. The amendments shall become effective immediately upon publication in the FEDERAL REGISTER.

1. Redesignate paragraphs (h) through (aa) as paragraphs (i) through (bb) respectively.

2. Insert a new paragraph (h) to read as follows:

(h) "Products" includes biological products and trivalent organic arsenicals.

3. Amend paragraph (i)(1), as redesignated, to read as follows:

(1) A virus is interpreted to be a product containing the minute living cause of an infectious disease and includes but is not limited to filterable viruses, bacteria, rickettsia, fungi, and protozoa.

4. Amend paragraph (i)(2), as redesignated, to read as follows:

(2) A therapeutic serum is the product obtained from the blood of an animal by removing the clot or clot components and the blood cells, and not intended for ingestion.

5. Amend paragraph (i)(5)(ii), as redesignated, to read as follows:

(ii) To a therapeutic serum, if composed of whole blood or plasma or containing some organic constituent or product other than a hormone or an amino acid, derived from whole blood, plasma, or serum, and not intended for ingestion.

6. Amend paragraph (i) (5) (iii), as redesignated, to read as follows:

(iii) To a toxin or antitoxin, if tended, irrespective of its source of origin, to be applicable to the prevention, treatment, or cure of disease or injuries of man through a specific immune process.

7. Amend paragraph (k), as redesignated, by deleting the first sentence.

8. Amend paragraph (n), as redesignated, to read as follows:

(n) "Expiration date" means the time of termination of the dating period expressed as the calendar month, day, and year, and where applicable the hour at or in which the dating period ends.

9. Amend paragraph (q), redesignated, to read as follows:

(q) The word "safety" means the relative freedom from harmful effect to persons affected, directly or indirectly, by a product when prudently administered, taking into consideration the character of the product in relation to the condition of the recipient at the time.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply sec. 351, 58 Stat. 702, as amended, 42 U.S.C. 262)

Dated: October 23, 1961.

[SEAL] JOHN D. PORTERFIELD,
Acting Surgeon General.

Approved October 27, 1961.

JAMES M. QUIGLEY,
Acting Secretary

[F.R. Doc. 61-10512; Filed, Nov. 2, 1961; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2527]

[77142]

WYOMING

Opening of Lands Under Section 24, Federal Power Act

By virtue of the authority contained in Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended, and pursuant to determination DA-141-Wyoming issued September 16, 1957, it is ordered as follows:

1. The following described lands are hereby restored to the operation of the public land laws, subject to any valid existing rights, the requirements of applicable law, rules and regulations, the provisions of any existing withdrawals, and the provisions of Section 24 of the Federal Power Act, supra:

SIXTH PRINCIPAL MERIDIAN

T. 14 N., R. 84 W.,
Sec. 24, lots 8 to 20, incl., and SW¼NW¼.

Aggregating 88.33 acres.

2. Until 10:00 a.m. on May 1, 1962, the State of Wyoming shall have a preferred right to apply to select the lands in accordance with subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852). During this period the State may also apply for the reservation to it or to any of its political subdivisions of any of the lands required for rights-of-way or materials sites in accordance with the provisions of Section 24 of the Federal Power Act, supra.

3. The lands have been open to mineral leasing and to mining locations subject to provisions of the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Cheyenne, Wyo.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

OCTOBER 30, 1961.

[F.R. Doc. 61-10504; Filed, Nov. 2, 1961; 8:46 a.m.]

[Public Land Order 2528]

ALASKA

Revoking Executive Order No. 9026 of January 16, 1942, and Public Land Order No. 1071 of February 15, 1955

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

[Anchorage 053853]

1. Executive Order No. 9026 of January 16, 1942, which withdrew a tract of land described by metes and bounds in section 34, T. 1 N., R. 1 W., S.M., in approximate latitude 60°07'30" North, longitude 149°26'15" West, for use of the War Department as a cantonment site is hereby revoked. The lands are identified on Supplemental Plat of U.S. Survey 242 accepted May 16, 1952, as "Tract A", containing 28.83 acres.

[Anchorage 053856]

2. Public Land Order No. 1071 of February 15, 1955, which withdrew the following described lands for use of the Alaska Road Commission, now Bureau of Public Roads, as a dock and wharf site, is hereby revoked:

SEWARD MERIDIAN

HOMER AREA

T. 7 S., R. 13 W.,
Sec. 1, lot 22.

Containing 0.92 acre.

3. The lands described in paragraph 1, hereof, are situated approximately one mile north of the townsite of Seward. Those in paragraph 2 are at the end of Homer Spit, which separates Kachemak Bay and Cook Inlet. The Spit is a natural gravel bar extending some 5 miles from a southerly point of the Kenai Peninsula.

4. Until 10:00 a.m. on January 30, 1962, the State of Alaska shall have a preferred right to select the lands in accordance with and subject to the limitations and requirements of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR Part 76.

5. Beginning at 10:00 a.m. on January 30, 1962, the lands shall be subject to operation of the public land laws, generally, including the mining laws subject to valid existing rights and equitable claims, the provisions of existing withdrawals, and the requirements of applicable law, rules, and regulations.

The lands described in paragraph 1, hereof, have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

JOHN A. CARVER, Jr.
Assistant Secretary of the Interior.

OCTOBER 30, 1961.

[F.R. Doc. 61-10505; Filed, Nov. 2, 1961; 8:47 a.m.]

[Public Land Order 2529]

ALASKA

Revoking Air Navigation Site Withdrawals Nos. 1 and 2

By virtue of the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered that the following described orders of the Bureau of Land Management withdrawing lands for the use of the Department of Commerce in the maintenance of air navigation facilities be and they are hereby revoked:

[Fairbanks 08606]

The order of August 14, 1951, withdrawing 45.89 acres near Kaltag on the right bank of the Yukon River, by metes and bounds, as Air Navigation Site Withdrawal No. 1.

[Fairbanks 08522]

The order of October 1, 1951, withdrawing 141.00 acres in the vicinity of Birches on the Yukon River about 500 feet northeast of the mouth of Montana Creek by metes and bounds as Air Navigation Site Withdrawal No. 2.

2. The lands are within the area described in section 10(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339; Public Law 85-508).

3. Until 10:00 a.m. on May 1, 1962, the State of Alaska shall have a preferred right to select the lands in accordance with and subject to the limitations and requirements of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), section 6 (b) and (g) of the Alaska Statehood Act of July 7, 1958, supra, and the regulations in 43 CFR Part 76.

4. Beginning at 10:00 a.m. on May 1, 1962, the lands shall be subject to operation of the public land laws generally, including the mining and mineral leasing laws, subject to valid existing rights and equitable claims, the provisions of existing withdrawals, and the requirements of applicable law, rules, and regulations.

Inquiries concerning the lands should be addressed to the manager, Land Office, Bureau of Land Management, Fairbanks, Alaska.

JOHN A. CARVER, JR.,
Assistant Secretary of the Interior.

OCTOBER 30, 1961.

[F.R. Doc. 61-10506; Filed, Nov. 2, 1961; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[8 CFR Parts 252, 253]

REQUIREMENTS FOR ADMISSION AND PAROLE OF ALIEN CREWMEN

Examination; Medical Treatment or Observation; Notice of Proposed Rule Making

Pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), notice is hereby given of the proposed issuance of the following rules pertaining to the requirements for admission and parole of alien crewmen. In accordance with subsection (b) of said section 4, interested persons may submit to the Commissioner of Immigration and Naturalization, Room 767, 119 D Street NE., Washington 25, D.C., written data, views, or arguments relative to these proposed rules. Such representations may not be presented orally in any manner. All relevant material received within 20 days following the day of publication of this notice will be considered.

1. In Part 252, paragraph (c) of § 252.1 is amended to read as follows:

§ 252.1 Examination of crewmen.

* * * * *

(c) *Requirements for admission.* Every alien crewman applying for landing privileges in the United States must make his application in person before an immigration officer, present a passport issued by the country of his nationality, valid for the period set forth in section 212(a)(26) of the act, and a valid unexpired visa if his name does not appear on the crew list visaed by a consular officer, and establish to the satisfaction of the immigration officer that he is not subect to exclusion under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

2. In Part 253, paragraph (d) is amended and paragraphs (e) and (f) are added to § 253.1 to read as follows:

§ 253.1 Parole.

* * * * *

(d) *Medical treatment or observation.* Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked may, upon the request of the master or agent, be paroled into the United States under the provisions of section 212(d)(5) of the act in the custody of the agent of the vessel or aircraft and at the expense of the transportation line for medical treatment or observation.

(e) *Crewman alleging persecution.* Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

(f) *Other crewmen.* Any alien crewman not within the purview of paragraphs (a) through (e) of this section may for other emergent reasons or for reasons deemed strictly in the public interest be paroled into the United States under the provisions of section 212(d)(5) of the act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

Dated: October 31, 1961.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 61-10530; Filed, Nov. 2, 1961; 8:52 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Part 131]

[Docket No. AO 16-A8]

ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Decision With Respect to Proposed Amendments to Marketing Agreement, as Amended, and Order as Amended

Pursuant to Public Law 320, 74th Congress, approved August 24, 1935 (49 Stat. 781; 7 U.S.C. 851 et seq.) and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders applicable to Anti-Hog-Cholera Serum and Hog-Cholera Virus (9 CFR Part 132) a public hearing was held at Kansas City, Missouri, on May 10, 1961, pursuant to notice thereof published in the FEDERAL REGISTER (26 F.R. 2319) on proposed amendments to the Marketing Agreement, as amended, hereinafter referred to as the "marketing agreement," and to the order, as amended (9 CFR Part 131), hereinafter referred to as the "order," regulating the handling of anti-hog-cholera serum and hog-cholera virus.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, Agricultural Research Service, on August 16, 1961, filed with the Hearing Clerk, United States Department of Agriculture, a recommended decision containing notice of the opportunity to file written exceptions thereto (26 F.R. 7781).

The material issues presented on the record of the hearing were:

1. The share of the cost of processing an application to be borne by an applicant for classification as a wholesaler; and

2. Circumstances justifying refund of all or a portion of the processing fee.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The share of the cost of processing an application to be borne by an applicant.* The marketing agreement and the order should be amended to provide that a fee of $100.00 shall accompany an application for classification as a wholesaler, $25.00 of which shall cover the applicant's pro rata share of the expenses of the Control Agency for the calendar year in which the application is approved and $75.00 shall cover the cost of processing the application.

The order presently provides that a fee of $25.00 shall accompany the application to cover the applicant's pro rata share of the expenses of the Control Agency in the year in which the application is approved, which fee shall be refunded if the application is denied. At the time this provision was placed in the order, it was not the practice of the Control Agency to require inspection of the facilities and operations of an applicant by an employee of the Agency. It relied upon information and representations submitted by the applicant in the application and any supplemental information obtained through correspondence, or otherwise, in arriving at a decision on the application. As an applicant had nothing to lose if his application was denied, many dealers and other unqualified persons applied for classification as a wholesaler in the hopes of being so classified on the basis of representations contained in the application. Due to lack of full disclosure of pertinent information, intentional or otherwise, or misrepresentations by the applicant, the Control Agency would often approve the application of a person who actually could not meet the requirements of a wholesaler set forth in the order. As a result, time and money was expended by the Control Agency in taking the action necessary to delete such persons from the list of approved wholesalers. In order to remedy the situation, the Control Agency recently has made a practice of investigating the qualifications of each applicant by having the Executive Secretary of the Control Agency inspect the premises and operations of each applicant. The cost of such investigation has placed an added burden upon the budget of the Control

Agency, which expense must be borne by the handlers under the order. The average cost of investigating 34 applicants located in different states in 1960 was $125.90 per applicant, covering travel, subsistence and salary of the investigator. This amount does not include office overhead and the expense of the Control Agency for the time spent in considering applications, which consumes approximately one-half the time of the members of the Control Agency while in session. Inasmuch as both the applicant and the handlers within the industry benefit from the proper classification of wholesalers, both should share the expense of processing an application. It is believed that $75.00 is a reasonable share of the cost of processing an application to be borne by an applicant. It is proposed, therefore, that the order be amended as set forth in the first paragraph of 1 hereof.

2. *Circumstances justifying refund of all or a portion of the processing fee.* Provision should be made for refunding to the applicant all or a portion of the processing fee in the following circumstances: (a) in the event the Control Agency receives a written request from the applicant for cancellation of his application before any expense has been incurred in processing such application, the entire processing fee shall be refunded to such applicant; (b) in the event of the death of the applicant, or the destruction of applicant's place of business, or the institution of insolvency proceedings by or against the applicant, during the pendency of the application, the Control Agency may refund any portion of the processing fee which is unexpended at the time of the receipt of a written request for cancellation of the application; and (c) in the event of the death of the applicant during the pendency of his application or shortly after action has been taken on such application by the Control Agency, and the Control Agency determines that the illness and death of the applicant prevented the timely filing of a request for cancellation of such application, the Control Agency may refund all or a portion of the application fee, whichever is consistent with its findings and conclusions in the matter.

Where a written request for cancellation of the application is received prior to the expenditure of any portion of the processing fee, all of the processing fee should be refunded as the purpose for which the fee is assessed ceases to exist. If a request for cancellation is received after expenses have been incurred, no part of the processing fee should be refunded, except under the circumstances specified in (b) and (c) of the first paragraph of 2, which are discussed hereinafter. As the processing fee is the minor portion of the total expense of processing an application, it would be inequitable for an applicant to recoup a portion of the application fee while handlers under the order bear the major portion of the expense occasioned by the applicant. Further, to refund a portion of the fee after investigation has commenced would encourage filing of an application by a person who knows he cannot meet the requirements of a wholesaler but would file on the chance that the investigation would not disclose certain facts. If such facts were discovered during the investigation and partial refunding were permitted, such person could recoup a portion of the fee by immediately filing a request for cancellation. In a number of instances in the past, applicants have requested cancellation when certain disqualifying facts were uncovered by the Control Agency or because the applicant "changed his mind." This was done even though no pecuniary incentive then existed.

There are certain circumstances over which an applicant has no control which would justify the refunding of an unexpended portion of the processing fee if timely application for cancellation is made. If the business premises of a qualified applicant were destroyed or insolvency proceedings were instituted by or against the applicant, and the applicant requested cancellation of the application during the pendency of the application, that portion of the fee which is unexpended at the time the request for cancellation is received should be refunded by the Control Agency. Destruction of the business premises or insolvency usually cannot be foreseen or controlled by the applicant.

Another circumstance that would warrant refunding all or a portion of the processing fee would be the death of the applicant during the pendency of the application or shortly after action thereon. In the event of a request for cancellation of the application because of the death of the applicant, that portion of the processing fee which is unexpended at the time the request is received should be refunded. As the circumstances surrounding the illness and death of an applicant may be such as to result in an excusable failure to file a timely request, provision should be made therefor. In the event of such excusable failure to file a timely request, the amount that should be refunded would depend upon the facts and circumstances existing at the time the request for cancellation would have been filed had the applicant been in a position to file a timely request. In the event of a finding of such excusable failure to file a timely request, the Control Agency should be authorized to refund all or a portion of the processing fee in accordance with its findings and conclusions in the matter. It is possible that the Control Agency could approve an application prior to being notified of the death of the applicant. In such event, it also should be authorized to refund the $25 "pro rata share" portion of the application fee if it determined that the illness and death of the applicant prevented the timely filing of a request for cancellation of the application.

Rulings on proposed findings and conclusions. No proposed findings and conclusions were received.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid marketing agreement and order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The said marketing agreement as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby proposed to be further amended, regulates the handling of anti-hog-cholera serum and hog-cholera virus in the same manner as, and contains only such terms and conditions as are contained in the said marketing agreement upon which hearings have been held.

Rulings on exceptions. No exceptions to the recommended decision were received.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Agreement Amending the Marketing Agreement, as amended, Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus" and "Order Amending the Order, as amended, Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Done at Washington, D.C., this 30th day of October 1961.

FRANK J. WELCH,
Acting Secretary.

Order[1] *Amending the Order, as Amended, Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus*

§ 131.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Law 320, 74th Congress, approved August 24, 1935 (49 Stat. 781; 7 U.S.C. 851 et seq.) and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders applicable to Anti-Hog-Cholera Serum and Hog-Cholera Virus (9 CFR Part 132) a public hearing was held at Kansas City, Missouri, on May 10, 1961 pursuant

[1] This order shall not become effective unless and until the requirements of § 132.14(b) of this chapter have been met.

to notice thereof published in the FEDERAL REGISTER (26 F.R. 2319) on proposed amendments to the Marketing Agreement, as amended, and to the order, as amended (9 CFR Part 131), regulating the handling of anti-hog-cholera serum and hog-cholera virus. Upon the basis of the evidence adduced at the hearings, and the record thereof, it is hereby found that:

(1) The said marketing agreement as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby proposed to be further amended, regulates the handling of anti-hog-cholera serum and hog-cholera virus in the same manner as, and contains only such terms and conditions as are contained in the said marketing agreement upon which hearings have been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of anti-hog-cholera serum and hog-cholera virus shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby amended as follows:

Delete § 131.44 and substitute therefor the following:

§ 131.44 Fee to accompany application for wholesaler classification.

(a) Each application for classification as a wholesaler shall be accompanied by an application fee of $100. Seventy-five dollars of such fee shall cover the cost of processing the application and the remaining $25 shall cover the applicant's pro rata share of the expenses of the Control Agency for the calendar year in which the application is approved.

(b) If the application for classification as a wholesaler is cancelled at the request of the applicant or denied by the Control Agency, $25 shall be refunded to the applicant and $75 shall be retained by the Control Agency to cover the cost of processing the application: *Provided,* That, in the event the Control Agency receives a written request from the applicant for cancellation of the application before any expense has been incurred in processing such application, the Control Agency shall refund the $75 processing fee: *And provided,* That, in the event of the death of the applicant, or the destruction of the applicant's place of business, or the institution of insolvency proceeding by or against the applicant, during the pendency of the application, the Control Agency may refund that portion of the processing fee which is unexpended at the time of the receipt of a written request for cancellation of the application: *And provided further,* That, in the event of the death of the applicant during the pendency of his application or within a short time after action has been taken on such application by the Control Agency, and the Control Agency determines, upon evidence satisfactory to it, that the illness and death of the applicant prevented the timely filing of a request for cancellation of such application, the Control Agency may refund all or a portion of the application fee, whichever is consistent with its findings and conclusions in the matter.

(c) The Control Agency shall make refunds on application fees only in accordance with the provisions of this section.

[F.R. Doc. 61-10514; Filed, Nov. 2, 1961; 8:49 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Part 947]

[Docket No. AO-313-A-2]

MILK IN SUBURBAN ST. LOUIS MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Suburban St. Louis marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the fifth day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Litchfield, Illinois, on October 4, 1961, pursuant to notice thereof which was issued August 31, 1961 (26 F.R. 8399).

The material issues on the record of the hearing relate to:

1. Revision of requirements for pool plant status of distributing plants;

2. The Class I price after November 30, 1961; and

3. Revision of both the rate and the method of applying the payment on unpriced milk including that distributed on routes from nonpool distributing plants.

No testimony was presented with respect to the three proposals relating to Issue No. 3. The proponents stated that since a hearing on this and other issues is expected to be held in the near future they would reserve their testimony on these points until that time. Hence, no action is taken on Issue No. 3.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The requirements for pool plant status of a distributing plant should be revised.

Cooperative associations proposed that the present requirement that a distributing plant dispose of not less than 20 percent of such plant's total Class I sales on routes in the marketing area be lowered to 10 percent. They stated the proposed change is necessary to insure the continued regulation of a plant which is located outside the marketing area at Mattoon, Illinois. This plant, one of the largest subject to the regulation, has been a pool plant since the inception of the order. Its Class I disposition outside the marketing area has been expanding much more rapidly than within the marketing area. As a consequence, its percentage of Class I distribution within the marketing area has fallen from approximately 40 percent to less than 25 percent since the order became effective.

A continuation of this trend would result in this plant's in-area distribution falling below the required minimum and a consequent loss of its pool plant status. Since this situation is being brought about, not by any decline in the volume of milk disposed of in the marketing area but by an increase in its disposition outside the area, it becomes necessary to consider whether the actual volume of milk disposed of in the area as well as the percentage should not be considered as a criterion for pooling.

Under the present provisions of the order a plant with a large volume of Class I business could acquire a large percentage of the total Class I distribution in the marketing area without becoming subject to full regulation. Reducing the pool plant requirements from 20 percent to 10 percent would still permit such a plant to distribute a substantial volume of milk in the area without becoming subject to full regulation and might bring under regulation several additional small plants whose in-area distribution is insignificant and has little or no effect upon the marketing of milk in the area.

Any plant which distributes 20 percent of its total Class I milk in the marketing area has demonstrated a significant association with the market and should continue to be fully regulated. In addition to these plants, however, any plant which distributes within the area a volume of Class I milk equal to one percent or more of the total Class I milk in the market is an important competitive factor and should be subject to full regulation, even though this volume represents less than 20 percent or even 10 percent of its total Class I business.

The total Class I disposition by all pool plants subject to regulation under the order plus the in-area sales of nonpool plants averages approximately 700,000 pounds per day. The order, therefore, should provide for full regulation of any plant whose distribution of Class I milk in the marketing area amounts to an average of 7,000 pounds or more per day. Use of the fixed figure rather than of 1 percent of the total Class I sales

will afford plants an opportunity to know beforehand whether they will be subject to regulation and will permit them to adjust their business accordingly. It will also eliminate the shifting in and out of the pool of plants whose distribution in the area might be fairly constant but might be more or less than 1 percent as total Class I milk in the pool varied.

Since the Mattoon plant is one of the largest regulated plants there is no question but that its Class I distribution in the area is well in excess of 7,000 pounds per day. It will, therefore, continue to be regulated even though its in-area distribution should fall below 20 percent of its total Class I business.

With respect to the several plants which are partially regulated at the present time, only two might be affected by the proposed 7,000 pounds per day figure. Both have in-area distribution at the present time in an amount between 10 and 15 percent of their total Class I distribution. Since the volume of their Class I distribution, either within the area or in total, is not available their status under the proposed amendment cannot be determined from the record.

In addition, the present language should be revised to more clearly reflect the intent of the provision. Since it is impossible to identify individual lots of milk in a plant the phrase, "a volume equal to not less than 50 percent of the total receipts of approved milk etc." should be used instead of the phrase, "not less than 50 percent of total receipts etc." Likewise the qualification of a plant should depend on its Class I distribution rather than on its Class I sales within the marketing area.

2. The present level of the Class I price should be continued.

The present Class I price provision is effective only through November 30, 1961. Cooperatives proposed that the present pricing scheme providing that the Class I base zone price per hundredweight be 10 cents less than the St. Louis Order No. 3 Class I price at the zero to 30-mile zone be continued and that the northern zone price, as now, be 5 cents less than the base zone price.

It was further proposed by a handler who is subject to regulation under Order No. 3 regulating the handling of milk in the St. Louis marketing area that a new base zone composed of St. Clair and Madison Counties be established and the Class I price at plants located therein be the same as the Class I price for the St. Louis Order No. 3 plants located in the 0- to 30-mile zone. The remainder of the present base zone, under this proposal, would be renamed the southern zone and the Class I prices in this and the northern zone would be, as now 10 and 15 cents, respectively, less than the 0- to 30-mile zone Class I price for Order No. 3 regulating the handling of milk in the St. Louis, Missouri, marketing area.

The Suburban St. Louis order became effective in part on May 1, 1960 and in its entirety on June 1, 1960. The Class I price was made effective only through November 1961, to provide opportunity for a review of marketing conditions and a reevaluation of such price in the light of actual experience. Figures compiled during the first 12 months show that approximately 79 percent of all producer milk was classified as Class I. During this 12-month period, May 1960 through April 1961, total receipts of producer milk were 27 percent greater than the gross Class I utilization of fully regulated handlers. During the 4-month period May through August, the only period for which market information is available for both 1960 and 1961, the average percent of producer milk classified as Class I decreased from 69 to 65 percent. In the same period total receipts of producer milk exceeded gross Class I utilization by 43 percent in 1960 and 54 percent in 1961. The relationship of producer receipts to Class I utilization in this market follows a similar trend found in the St. Louis, Missouri, market and in other midwest marketing areas. Receipts from producers in this area follow the regional trend of increasing at a slightly higher rate than Class I utilization. Analysis of the market information available during the first sixteen months under this order indicates that the present method of determining the Class I price has encouraged an adequate, but not excessive, supply of milk for the market's Class I needs and has maintained such price in alignment with prices in surrounding areas.

Proponents of the proposal to establish a Class I price at plants located in St. Clair and Madison Counties 10 cents higher than the present level failed to reveal substantial changes in marketing conditions which would warrant a revision at this time. Handlers located in these two counties continue to procure milk in the same area and to distribute approximately the same percentages of Class I milk in the various counties as they did at the time of the promulgation hearing. Differences in the health department requirements and in the degree of enforcement are still substantially the same as 2 years ago.

There is no showing that proponent or other St. Louis handlers have suffered any competitive disadvantage because the Class I price under the Surburban St. Louis order in these counties is 10 cents per hundredweight less than the St. Louis order price. Therefore, the proposal to change the present Class I pricing plan is denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Suburban St. Louis marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Delete § 947.13(a) and substitute:

(a) A distributing plant from which a volume equal to not less than 50 percent of the total receipts of approved milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 947.9(c) is distributed during the month as Class I on routes, and from which an average of not less than 7,000 pounds per day or not less than 20 percent of the plant's total Class I milk, whichever is less, is distributed on routes in the marketing area.

2. Delete § 947.51(a) and substitute:

(a) *Class I price.* The price per hundredweight of Class I milk at plants located in the base zone shall be 10 cents less, and at plants located in the northern zone shall be 15 cents less than the St. Louis Federal Order (Part 903 of this chapter) Class I price effective at a pool plant located in the 0- to 30-mile zone.

Signed at Washington, D.C., on October 30, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-10515; Filed, Nov. 2, 1961; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 17]

BREAD, ENRICHED BREAD, MILK BREAD, RAISIN BREAD, AND WHOLE WHEAT BREAD

Proposed Standard of Identity

Notice is given that a petition has been filed by Foremost Dairies, San Francisco, California, and Hy-Klas Food Products, Inc., St. Joseph, Missouri, proposing amendment of the standards of identity for bread, enriched bread, milk bread, raisin bread, and whole wheat bread (21 CFR 17.1, 17.2, 17.3, 17.4, 17.5) to make *L*-cysteine an optional ingredient permitted to be used in making each of these kinds of bread. This optional ingredient is proposed for use on the claim that it will facilitate dough handling and speed production; it is not proposed because of any claimed nutritive value. Because the standards for enriched bread, milk bread, raisin bread, and whole wheat bread are cross referenced to § 17.1, the standard for bread, the amendments proposed can be achieved by adding to paragraph (a) of § 17.1 a new subapragraph (16), as follows:

§ 17.1 Bread, white bread, and rolls, white rolls, or buns, white buns; identity; label statement of optional ingredients.

(a) * * *

(16) *L*-cysteine, in a quantity not to exceed 0.009 part for each 100 parts by weight of flour used.

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371), and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), all interested persons are invited to submit their views in writing regarding this proposal. Such views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., prior to the 30th day following the date of publication of this notice in the FEDERAL REGISTER.

Dated: October 30, 1961.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 61-10527; Filed, Nov. 2, 1961; 8:51 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 566) has been filed by Merck Chemical Division, Merck and Co., Inc., Rahway, New Jersey, proposing the issuance of an amendment to § 121.210 of the food additives regulations to provide for the safe use of amprolium in medicated feed for replacement pullets at levels of 0.004 percent to 0.0125 percent as an aid in developing immunity to coccidiosis.

Dated: October 27, 1961.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 61-10510; Filed, Nov. 2, 1961; 8:47 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 949]

AIRWORTHINESS DIRECTIVES

Navion and Twin Navion Aircraft

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator by amending airworthiness directive 61-12-4 (26 F.R. 5121) pertaining to inspection of the main landing gear retract link, P/N 143-33165-10 on Navion and Twin Navion aircraft. It has subsequently been determined that a similar part bearing Temco P/N TN-57009-1 is installed on some aircraft and likewise should be inspected. Therefore, it is proposed to amend AD 61-12-4 to include Temco P/N TN-57009-1.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before December 4, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), as follows:

Airworthiness Directive 61-12-4 (26 F.R. 5121), is amended by changing the first sentence in paragraph 4 to read as follows:

Inspect by magnetic particle or equivalent, the main landing gear retract link assembly Navion P/N 143-33165-10 or Temco P/N TN-57009-1, whichever is installed, for cracks in or near end fitting welds.

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director, Flight Standards Service.

[F.R. Doc. 61-10494; Filed, Nov. 2, 1961; 8:45 a.m.]

[14 CFR Part 507]

[Reg. Docket No. 954]

AIRWORTHINESS DIRECTIVES

Curtiss-Wright C-46 Series Aircraft

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring correction of the fire protection deficiencies on C-46 Series aircraft.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before December 5, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

CURTISS-WRIGHT. Applies to all C-46 Series aircraft except the following: Those aircraft listed on Aircraft Specification 2A5, C-46R aircraft listed on Aircraft Specification 3A2, aircraft certificated under STC SA4-33, and aircraft certificated under STC SA2-422.

Compliance with items (a) (1), (2), and (3), and (b) (4) (vi) required within the next 150 hours of time in service after the effective date of this AD.

Compliance with all other items required within the next 500 hours of time in service after the effective date of this AD.

To correct the fire protection deficiencies on the C-46 Series aircraft, the following is considered necessary:

(a) To prevent fire originating in the engine sections from burning into the wheel well area, accomplish the following:

(1) Cover the landing gear doors with an .015 stainless steel sheet from the forward edge of the doors aft to approximately station 145 (approximately 55 inches).

(2) Cover the fixed portion of the lower wheel well skin fore and aft between the firewall and the forward edge of the landing

gear doors, peripherally between the wheel well door hinge lines, with an .015 stainless steel sheet.

(3) Cover the sides of the nacelle in the area of the exhaust impingement with an .015 stainless steel rectangular sheet approximately 20 inches by 40 inches with the lower, long side boundary along the landing gear door hinge line and the forward, short side even with the forward edge of the existing nacelle skin at the firewall.

Attach all of the above steel sheets with monel or steel feasteners.

(b) In order to generally improve the powerplant fire protection in C–46 Series, aircraft, accomplish the following:

(1) *Shut-off valves.* Install fluid shut-off valves which may be opened and closed in flight aft of the firewall in all fuel, oil, and hydraulic lines. USAF Technical Order 01–25LA–190 covers this same subject. If propeller or carburetor anti-icing systems are employed and use alcohol or other flammable fluids as the anti-icing medium, the systems described in USAF T.O. AN 01–25LA–2, pages 458–464, are satisfactory except that shut-off valves or a selector valve which can be opened and closed in flight must be provided aft of the firewall to shut off the flow to either engine. The system shall be such as to shut off the pump automatically, or otherwise guard against hazardous pressures, when the flow to both nacelles is stopped. (No shut-off valve will be required for the feathering pump oil lines—see (3) below.)

(2) *Engine firewalls.* Engine firewalls must be rendered fireproof by adequately sealing all openings such as the filtered air duct opening, the oil cooler control rod and filtered air control rod openings, other power plant control openings, holes through the firewall for electric conduits, and any other firewall openings. All attachments through the firewall utilized in rendering the firewall fireproof shall be monel or steel attachments.

(3) *Propeller feathering pump installation.* The portion of the propeller feathering oil line forward of the firewall between the firewall and the pump shall be of steel or other fireproof material. The line between the pump and governor shall be of fire resistant material with coupled hose assemblies, meeting the requirements of TSO–C42, used in any flexible connections. Electrical conduit for the pump motor and other electrical components forward of the firewall which are essential for propeller feathering shall be fire resistant or protected in a manner to render them fire resistant. Wire conforming to MIL–C–25038 is considered fire resistant. The feathering pump can be considered an adequate means of shutting off the flow of oil in the feathering line.

(4) *Fire detectors.* The Fenwal continuous type fire detectors, which were originally provided, must be removed and replaced with unit or continuous type fire detectors conforming with FAA Technical Standard Order, TSO–C11c. Such detectors shall also meet the requirements specified in subparagraphs (i) through (vi). If unit type detectors are used, they shall be spaced as specified in subparagraphs (i) and (ii) and continuous type detectors, if used, shall be so installed as to provide the same coverage.

(i) Engine nacelles: Fire detectors, spaced not over 7 inches apart, shall be installed on the lower half of the forward side of the firewall at its outer periphery, and along the horizontal diameter. Also, fire detectors shall be located so as to be in the air egress pattern for any other openings in the engine or accessory cowling.

(ii) Engine mount ring and oil cooler supports: Additional fire detectors, spaced not over 18 inches apart, shall be provided for the upper two-thirds of the engine mount ring. Also, a fire detector shall be installed on each oil cooler support approximately 2 or 3 inches above the oil cooler.

(iii) Warning light covers: Fire-warning-light covers or shutters, which are capable of dimming or shutting off the light entirely, must be removed.

(iv) Means shall be provided to permit the crew to check in flight the functioning of the electric circuit associated with the fire detection and fire warning systems.

(v) Wiring and other components of the fire detection system which are located in the engine and accessory sections shall be of fire resistant construction.

(vi) Aural fire warning means, along with fire warning lights, shall be in stalled to indicate the presence of fire in either engine nacelle.

(5) *Engine compartment lines.* The following lines carrying inflammable fluids or vapors in the engine compartment shall be fire resistant, and items (a) through (g), inclusive, shall also have fireproof firewall fittings. Flexible connections in lines attached to the engine or subject to relative motion or pressure shall employ fire resistant coupled hose assemblies: (a) carburetors bleed back lines, (b) cabin heater fuel lines, (c) oil dilution lines, (d) fuel pressure transmitter lines, (e) oil pressure transmitter lines, (f) manifold pressure lines, (g) all other hydraulic oil lines, (h) all engine fuel lines, (i) engine primer lines, (j) engine breather lines, (k) engine supercharger drain lines, (l) oil separator return lines, (m) vacuum system pressure lines, (n) all main oil lines, (o) engine oil cooler lines, (p) hydraulic pump drain lines, (q) exhaust collector drain lines, (r) oil tank vent lines, (s) fuel pump drain lines.

Flexible hose assemblies for those lines noted above shall conform to TSO–C53 Type "C". Metal tubing, hose, and clamp type plumbing utilized in those lines noted above shall consist of steel tubing and fire resistant hose. Aeroquip 624 fire sleeve, or equivalent, may be utilized to render non-fire resistant hose (for the hose, steel tube, and clamp type plumbing) fire resistant.

(6) Airplane flight manual. Appropriate changes to the airplane flight manual shall be prepared to cover emergency procedures associated with the above changes.

Issued in Washington, D.C., on October 30, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61–10495; Filed, Nov. 2, 1961; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–LA–29]

CONTROLLED AIRSPACE

Proposed Alteration of Transition Area Designation

In a notice of proposed rule making published in the FEDERAL REGISTER as Airspace Docket No. 60–LA–29 on September 14, 1961 (26 F.R. 8599), it was stated that the Federal Aviation Agency proposed, in addition to other actions, to designate a transition area at Miles City, Mont., to extend upward from 1,200 feet above the surface within a 20-mile radius of the Miles City VORTAC extending clockwise from the 254° True radial to the 156° True radial, and within a 35-mile radius of the VORTAC extending clockwise from the 156° True radial to the 254° True radial.

Subsequent to publication of the notice, the controlled airspace requirements in the Miles City area were reviewed attendant to the provisions of the new aircraft holding pattern procedures to become effective January 1, 1962. It has been determined that the additional controlled airspace within a 40-mile radius of the Miles City VORTAC extending clockwise from the 236° True radial to the 254° True radial is required to encompass the increased dimensions of the holding pattern areas. This would provide additional controlled airspace for the protection of aircraft in holding patterns at a DME fix 15 nautical miles west of the Miles City VORTAC on the 254° True radial. Accordingly, action is taken herein to amend the notice by adding to the description of the proposed transition area the airspace described above.

In order to provide interested persons time to adequately evaluate this proposal, as modified herein, and an opportunity to submit additional written data, views or arguments, the date for filing such material will be extended to November 20, 1961.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), I hereby give notice that the time within which comments will be received for consideration on Airspace Docket No. 60–LA–29 is extended to November 20, 1961. Communications should be submitted in triplicate to the Regional Manager, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on October 27, 1961.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 61–10496; Filed, Nov. 2, 1961; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 61-46]

EQUIPMENT, INSTALLATIONS, OR MATERIALS

Approval Notice

1. Various items of lifesaving, firefighting, and miscellaneous equipment, installations, and materials used on merchant vessels subject to Coast Guard inspection or on certain motorboats and other pleasure craft are required by law and various regulations in 46 CFR Chapter I to be of types approved by the Commandant, United States Coast Guard. The procedures governing the granting of approvals, and the cancellation, termination or withdrawal of approvals are set forth in 46 CFR 2.75-1 to 2.75-50, inclusive. For certain types of equipment, installations, and materials, specific specifications have been prescribed by the Commandant and are published in 46 CFR Parts 160 to 164, inclusive (Subchapter Q—Specifications), and detailed procedures for obtaining approvals are also described therein.

2. The Commandant's approval of a specific item is intended to provide a control over its quality. Therefore, such approval applies only to the item constructed or installed in accordance with the applicable requirements and the details described in the specific approval. If a specific item when manufactured does not comply with the details in the approval, then such item is not considered to have the Commandant's approval, and the certificate of approval issued to the manufacturer does not apply to such modified item. For example, if an item is manufactured with changes in design or material not previously approved, the approval does not apply to such modified item.

3. After a manufacturer has submitted satisfactory evidence that a particular item complies with the applicable laws and regulations, a Certificate of Approval (Form CGHQ-10030) will be issued to the manufacturer certifying that the item specified complies with the applicable laws and regulations and approval is given, which will be in effect for a period of 5 years from the date given unless sooner canceled or suspended by proper authority.

4. The purpose of this document is to notify all concerned that certain approvals were granted during the period from September 7, 1961, through September 19, 1961. These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50, inclusive.

5. The delegations of authority for the Coast Guard's actions with respect to approvals may be found in Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167-14, dated November 26, 1954 (19 F.R. 8026), 167-15, dated January 3, 1955 (20 F.R. 840), 167-20, dated June 18, 1956 (21 F.R. 4894), CGFR 56-28, dated July 24, 1956 (21 F.R. 5659), or 167-38, dated October 26, 1959 (24 F.R. 8857), and the statutory authority may be found in R.S. 4405, as amended, 4462, as amended, 4488, as amended, 4491, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 54 Stat. 346, as amended, sec. 3, 70 Stat. 152 (46 U.S.C. 375, 416, 481, 489, 367, 526p, 1333, 390b), sec. 4(e), 67 Stat. 462 (43 U.S.C. 1333(e), or sec. 3(c), 68 Stat. 675 (50 U.S.C. 198), and implementing regulations in 46 CFR Chapter I or 33 CFR Chapter I.

6. In Part I of this document are listed the approvals granted which shall be in effect for a period of 5 years from the dates granted, unless sooner canceled or suspended by proper authority.

PART I—APPROVALS OF EQUIPMENT, INSTALLATIONS, OR MATERIALS

LIFE PRESERVERS, CORK (JACKET TYPE) MODELS 32 AND 36

Approval No. 160.003/27/0, Model 32, adult cork life preserver, U.S.C.G. Specification Subpart 160.003, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86-88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

Approval No. 160.003/28/0, Model 36, child cork life preserver, U.S.C.G. Specification Subpart 160.003, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86-88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

BUOYS, LIFE, RING, CORK OR BALSA WOOD

Approval No. 160.009/43/0, 20-inch cork ring life buoy, U.S.C.G. Specification Subpart 160.009, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86-88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

Approval No. 160.009/44/0, 24-inch cork ring life buoy, U.S.C.G. Specification Subpart 160.009, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86-88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

Approval No. 160.009/45/0, 30-inch cork ring life buoy, U.S.C.G. Specification Subpart 160.009, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86-88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

BUOYANT VESTS, KAPOK OR FIBROUS GLASS, ADULT AND CHILD

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.047/505/0, Type I, Model AK-1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for DRYBAK, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.047/505/0 dated March 2, 1961, to show change of address of distributor and name and address of manufacturer.)

Approval No. 160.047/506/0, Type I, Model CKM-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for DRYBAK, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.047/506/0 dated March 2, 1961, to show change of address of distributor and name and address of manufacturer.)

Approval No. 160.047/507/0, Type I, Model CKS-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for DRYBAK, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.047/507/0 dated March 2, 1961, to show change of address of distributor and name and address of manufacturer.)

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.048/26/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c)(1)(i), manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.048/26/0 dated December 20, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/27/1, special approval for 17" x 14" x 2" rectangular ribbed-type kapok buoyant cushion, 21-oz. kapok, dwg. No. 4, dated August 30, 1960, and bill of material dated August 5, 1955, manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.048/27/1 dated September 7, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/152/0, group approval for rectangular and trapezoidal fibrous glass buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and

weights of fibrous glass filling to be as per Table 160.048–4(c)(1)(ii), manufactured by Marine Upholstery & Specialty Co., Division of Shearman Brothers, 25 Shearman Place, Jamestown, New York, effective September 7, 1961. (It supersedes Approval No. 160.048/152/0 dated May 12, 1961, to show change of name and address.)

Approval No. 160.048/182/0, special group approval for 15" x 2" x various lengths rectangular kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, weights of kapok filling to be as per Table 160.048–4(c)(1)(i), manufactured by Marine Upholstery & Specialty Co., Division of Shearman Brothers, 25 Shearman Place, Jamestown, New York, effective September 7, 1961. (It supersedes Approval No. 160.048/182/0 dated May 12, 1961, to show change of name and address.)

Approval No. 160.048/195/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c)(1)(i), manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for Van Camp Hardware & Iron Company, 401 West Maryland Street, Indianapolis 6, Indiana, effective September 19, 1961. (It supersedes Approval No. 160.048/195/0 dated November 23, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/198/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c)(1)(i), manufactured by the Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for The Point Sporting Goods Co., Stevens Point, Wisconsin, effective September 19, 1961. (It supersedes Approval No. 160.048/198/0 dated November 28, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/203/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c)(1)(i), manufactured by Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for DRY-BAK, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.048/203/0, dated March 2, 1961, to show change of address of distributor and name and address of manufacturer.)

Approval No. 160.048/204/0, special approval for 17" x 14" x 2" rectangular ribbed-type kapok buoyant cushion, 21-oz. kapok, dwg. No. 4, dated August 30, 1960, and bill of material dated August 5, 1955, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for DRYBAK, Eminence, Kentucky, effective September 19, 1961. (It supersedes Approval No. 160.048/204/0 dated March 2, 1961, to show change of address of distributor and name and address of manufacturer.)

Approval No. 160.048/205/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c)(1)(i), manufactured by the Brunswick Corporation, Brunswick Sports Division, Eminence, Ky., for J. S. Oshman Co., 2320 Maxwell Lane, Houston 23, Texas, effective September 19, 1961. (It supersedes Approval No. 160.048/205/0 dated May 5, 1961, to show change of name and address of manufacturer.)

BUOYANT CUSHIONS, UNICELLULAR PLASTIC FOAM

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.049/41/0, special group approval for rectangular and trapezoidal unicellular plastic foam buoyant cushions, U.S.C.G. Specification Subpart 160.049, sizes limited to 2" thick as per Table 160.049–4(c)(1), manufactured by Marine Upholstery & Specialty Co., Division of Shearman Brothers, 25 Shearman Place, Jamestown, New York, effective September 7, 1961. (It supersedes Approval No. 160.049/41/0 dated May 12, 1961, to show change of name and address.)

BUOYS, LIFE, RING, UNICELLULAR PLASTIC

Approval No. 160.050/33/0, 30-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050 and B. F. Goodrich dwg. 12874, dated March 6, 1959, revised July 15, 1959, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, N.Y., buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Conn., effective September 14, 1961.

Approval No. 160.050/34/0, 24-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050 and B. F. Goodrich Co. dwg. 12874, dated March 6, 1959, revised July 15, 1959, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Conn., effective September 14, 1961.

Approval No. 160.050/35/0, 20-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050 and B. F. Goodrich Co. dwg. 12874, dated March 6, 1959, revised July 15, 1959, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Conn., effective September 14, 1961.

BUOYANT VESTS, UNICELLULAR PLASTIC FOAM, ADULT AND CHILD

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.052/101/1, Type II, Model JV–L, adult unicellular plastic foam buoyant vest, dwg. JV–L No. 3, dated August 16, 1961, manufactured by Jones & Yandell Division, American Tent Company, P.O. Box 270, Canton, Mississippi, effective September 12, 1961. (It supersedes Approval No. 160.052/101/0 dated September 19, 1960.)

Approval No. 160.052/102/1, Type II, Model JV–M, child unicellular plastic foam buoyant vest, dwg. JV–M No 3, dated August 16, 1961, manufactured by Jones & Yandell Division, American Tent Company, P.O. Box 270, Canton, Mississippi, effective September 12, 1961. (It supersedes Approval No. 160.052/102/0 dated September 19, 1960.)

Approval No. 160.052/103/1, Type II, Model JV–S, child unicellular plastic foam buoyant vest, dwg. JV–S No. 3, dated August 16, 1961, manufactured by Jones & Yandell Division, American Tent Company, P.O. Box 270, Canton, Mississippi, effective September 12, 1961. (It supersedes Approval No. 160.052/103/0 dated September 19, 1960.)

Approval No. 160.052/140/0, Type II, Model 390, adult unicellular plastic foam buoyant vest, dwg. LP 39012 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Model 390, manufactured by The Safegard Corp., Box 66, Station B, Cincinnati 22, Ohio, effective September 12, 1961.

Approval No. 160.052/141/0, Type II, Model 391, child, medium, unicellular plastic foam buoyant vest, dwg. LP 39012 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Model 391, manufactured by The Safegard Corp., Box 66, Station B, Cincinnati 22, Ohio, effective September 12, 1961.

Approval No. 160.052/142/0, Type II, Model 392, child, small, unicellular plastic foam buoyant vest, dwg. LP 39012 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Model 392, manufactured by The Safegard Corp., Box 66, Station B, Cincinnati 22, Ohio, effective September 12, 1961.

Approval No. 160.052/144/0, Type II, Model UPA, adult unicellular plastic foam buoyant vest, dwg. 122060 (sheets 1 to 4) dated December 20, 1960, and Specification dated December 20, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

Approval No. 160.052/145/0, Type II, Model UPM, medium, child unicellular plastic foam buoyant vest, dwg. 122060 (sheets 1 to 4) dated December 20, 1960, and Specifications dated December 20, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

Approval No. 160.052/146/0, Type II, Model UPS, small, child unicellular plastic foam buoyant vest, dwg. 122060 (sheets 1 to 4) dated December 20, 1960, and Specifications dated December 20, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn, 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, effective September 14, 1961.

FLAME ARRESTERS, BACKFIRE (FOR CARBURETORS)

Approval No. 162.015/45/0, Volvo Model No. A6050–B16 and/or Mann

NK66–00 backfire flame arrester for carburetors, dwg. No. 886315, assembly, dated March 7, 1960, dwg. No. 803036, arrester assembly, dated September 19, 1956, provided by Volvo Import, Inc., 452 Hudson Terrace, Englewood Cliffs, N.J., effective September 15, 1961. (It supersedes Approval No. 162.015/45/0 published in the FEDERAL REGISTER June 21, 1960.)

INCOMBUSTIBLE MATERIALS

Approval No. 164.009/73/0, "TURNALL Asbestos Ships Board" asbestos cement board type incombustible material, identical to that described in National Bureau of Standards Test Report No. TG10210–2077: FR 3594, dated August 22, 1961, approved in a nominal density of 45 pounds per cubic foot, manufactured by Turners Asbestos Cement Co. Ltd., Trafford Park, Manchester 17, England, effective September 12, 1961.

Dated: October 26, 1961.

[SEAL] J. A. HIRSHFIELD,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 61–10517; Filed, Nov. 2, 1961; 8:50 a.m.]

[CGFR 61–47]

EQUIPMENT, INSTALLATIONS, OR MATERIALS

Approval Notice

1. Various items of lifesaving, firefighting, and miscellaneous equipment, installations, and materials used on merchant vessels subject to Coast Guard inspection or on certain motorboats and other pleasure craft are required by law and various regulations in 46 CFR Chapter I to be of types approved by the Commandant, United States Coast Guard. The procedures governing the granting of approvals, and the cancellation, termination or withdrawal of approvals are set forth in 46 CFR 2.75–1 to 2.75–50, inclusive. For certain types of equipment, installations, and materials, specific specifications have been prescribed by the Commandant and are published in 46 CFR Parts 160 to 164, inclusive (Subchapter Q—Specifications), and detailed procedures for obtaining approvals are also described therein.

2. The Commandant's approval of a specific item is intended to provide a control over its quality. Therefore, such approval applies only to the item constructed or installed in accordance with the applicable requirements and the details described in the specific approval. If a specific item when manufactured does not comply with the details in the approval, then such item is not considered to have the Commandant's approval, and the certificate of approval issued to the manufacturer does not apply to such modified item. For example, if an item is manufactured with changes in design or material not previously approved, the approval does not apply to such modified item.

3. After a manufacturer has submitted satisfactory evidence that a particular item complies with the applicable laws and regulations, a Certificate of Approval (Form CGHQ–10030) will be issued to the manufacturer certifying that the items specified complies with the applicable laws and regulations and approval is given, which will be in effect for a period of 5 years from the date given unless sooner canceled or suspended by proper authority.

4. The purpose of this document is to notify all concerned that certain approvals were granted during the period from September 26, 1961, through October 2, 1961. These actions were taken in accordance with the procedures set forth in 46 CFR 2.75–1 to 2.75–50, inclusive.

5. The delegations of authority for the Coast Guard's actions with respect to approvals may be found in Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167–14, dated November 26, 1954 (19 F.R. 8026), 167–15, dated January 3, 1955 (20 F.R. 840), 167–20, dated June 18, 1956 (21 F.R. 4894), CGFR 56–28, dated July 24, 1956 (21 F.R. 5659), or 167–38, dated October 26, 1959 (24 F.R. 8857), and the statutory authority may be found in R.S. 4405, as amended, 4462, as amended, 4488, as amended, 4491, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 54 Stat. 346, as amended, sec. 3, 70 Stat. 152 (46 U.S.C. 375, 416, 481, 489, 367, 526p, 1333, 390b), sec. 4(e), 67 Stat. 462 (43 U.S.C. 1333(e)), or sec. 3(c), 68 Stat. 675 (50 U.S.C. 198), and implementing regulations in 46 CFR Chapter I or 33 CFR Chapter I.

6. In Part I of this document are listed the approvals granted which shall be in effect for a period of 5 years from the dates granted, unless sooner canceled or suspended by proper authority.

PART I—APPROVALS OF EQUIPMENT, INSTALLATIONS, OR MATERIALS

BUOYANT VESTS, KAPOK OR FIBROUS GLASS, ADULT AND CHILD

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.047/318/0, Type I, Model AK–1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Kentucky, effective September 26, 1961. (It supersedes Approval No. 160.047/318/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/319/0, Type I, Model CKM–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Kentucky, effective September 26, 1961. (It supersedes Approval No. 160.047/319/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/320/0, Type I, Model CKS–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Kentucky, effective September 26, 1961. (It supersedes Approval No. 160.047/320/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/378/0, Type I, Model AK–1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Liberty Distributors, 4300 North Fifth Street, Philadelphia 5, Pennsylvania, effective September 28, 1961. (It supersedes Approval No. 160.047/378/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/379/0, Type I, Model CKM–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Liberty Distributors, 4300 North Fifth Street, Philadelphia 5, Pennsylvania, effective September 28, 1961. (It supersedes Approval No. 160.047/379/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/380/0, Type I, Model CKS–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Liberty Distributors, 4300 North Fifth Street, Philadelphia 5, Pennsylvania, effective September 28, 1961. (It supersedes Approval No. 160.047/380/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/472/0, Type I, Model AK–1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Div., Eminence, Ky., for the Beck & Gregg Hardware Company, P.O. Box 984, 217 Luckie Street, Atlanta 1, Georgia, effective October 2, 1961. (It supersedes Approval No. 160.047/472/0 dated November 28, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/473/0, Type I, Model CKM–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Div., Eminence, Ky., for the Beck & Gregg Hardware Company, P.O. Box 984, 217 Luckie Street, Atlanta 1, Georgia, effective October 2, 1961. (It supersedes Approval No. 160.047/473/0 dated November 28, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/474/0, Type I, Model CKS–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for the Beck & Gregg Hardware Company, P.O. Box 984, 217 Luckie Street, Atlanta 1, Georgia, effective October 2, 1961. (It supersedes Approval No. 160.047/474/0, dated November 28, 1960, to show change of name and address of manufacturer.)

Approval No. 160.047/484/0, Type I, Model AK–1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Bob Erath Company, 603 East Washington Street, South Bend 22, Indiana, effective September 29, 1961. (It

supersedes Approval No. 160.047/484/0 dated January 4, 1961, to show change of name and address of manufacturer.)

Approval No. 160.047/485/0, Type I, Model CKM–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Bob Erath Company, 603 East Washington Street, South Bend 22, Indiana, effective September 29, 1961. (It supersedes Approval No. 160.047/485/0 dated January 4, 1961, to show change of name and address of manufacturer.)

Approval No. 160.047/486/0, Type I, Model CKS–1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Bob Erath Company, 603 East Washington Street, South Bend 22, Indiana, effective September 29, 1961. (It supersedes Approval No. 160.047/486/0 dated January 4, 1961, to show change of name and address of manufacturer.)

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.048/131/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Bob Erath Co., 603 East Washington Street, South Bend 22, Indiana, effective September 26, 1961. (It supersedes Approval No. 160.048/131/0 dated December 31, 1958, to show change of name and address of manufacturer.)

Approval No. 160.048/141/0, special approval for 15" x 15" x 2" rectangular kapok buoyant cushion, 20-oz. kapok, U.S.C.G. Specification Subpart 160.048, manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Coast to Coast Stores, Central Organization, Inc., 7500 Excelsior Boulevard, Minneapolis 26, Minn., effective September 26, 1961. (It supersedes Approval No. 160.048/141/0 dated March 14, 1959, to show change of name and address of manufacturer.)

Approval No. 160.048/173/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Liberty Distributors, 4300 North Fifth Street, P.O. Box 95, Philadelphia, Pa., effective September 26, 1961. (It supersedes Approval No. 160.048/173/0 dated March 16, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/181/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Associated Merchandising Corp., 1440 Broadway, New York 18, New York, effective September 26, 1961. (It supersedes Approval No. 160.048/181/0 dated June 21, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/190/0, group approval for rectangular and trapezoidal kapok bouyant cushion, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for The Firestone Tire & Rubber Co., Akron 17, Ohio, effective September 26, 1961. (It supersedes Approval No. 160.048/190/0 dated September 23, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/197/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Beck & Gregg Hardware Company, P.O. Box 984, 217 Luckie Street, Atlanta 1, Georgia, effective September 26, 1961. (It supersedes Approval No. 160.048/197/0 dated November 28, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/199/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for Automatic Distributing Corp., 5721 Harvey Wilson Drive, Houston 20, Texas, effective September 26, 1961. (It supersedes Approval No. 160.048/199/0 dated December 2, 1960, to show change of name and address of manufacturer.)

Approval No. 160.048/202/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048–4(c) (1) (i), manufactured by Brunswick Corp., Brunswick Sports Division, Eminence, Ky., for The Bowman Products Company, 850 East 72d Street, Cleveland 3, Ohio, effective September 26, 1961. (It supersedes Approval No. 160.048/202/0, dated January 27, 1961, to show change of name and address of manufacturer.)

BUOYS, LIFE, RING, UNICELLULAR PLASTIC

Approval No. 160.050/36/0, 30-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050 and B. F. Goodrich dwg. 12988 dated November 30, 1955, revised January 13, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Connecticut, effective September 28, 1961.

Approval No. 160.050/37/0, 24-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050, and B. F. Goodrich dwg. 12988 dated November 30, 1959, revised January 13, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Connecticut, effective September 28, 1961.

Approval No. 160.050/38/0, 20-inch unicellular plastic ring life buoy, U.S.C.G. Specification Subpart 160.050 and B. F. Goodrich dwg. 12988 dated November 30, 1955, revised January 13, 1960, manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Avenue, Brooklyn 1, N.Y., for Nautical Products, Inc., 86–88 Congress Street, Brooklyn 1, New York, buoy bodies made by B. F. Goodrich Co., Sponge Products Division, Sheldon, Connecticut, effective September 28, 1961.

BUOYANT VESTS, UNICELLULAR PLASTIC FOAM, ADULT AND CHILD

NOTE: Approved for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.052/137/0, Type II, Model LG–97, adult unicellular plastic foam buoyant vest, dwg. D–97 (Sheet 1 of 1) dated June 26, 1961, and Bill of Materials dated September 14, 1961, manufactured by Stearns Manufacturing Company, Division Street at 30th, St. Cloud, Minnesota, effective September 27, 1961.

Approval No. 160.052/138/0, Type II, Model LG–98M, child, medium, unicellular plastic foam buoyant vest, dwg. D–98M (Sheet 1 of 1) dated June 26, 1961, and Bill of Materials dated September 14, 1961, manufactured by Stearns Manufacturing Company, Division Street at 30th, St. Cloud, Minnesota, effective September 27, 1961.

Approval No. 160.052/139/0, Type II, Model LG–98S, child, small, unicellular plastic foam buoyant vest, dwg. D–98S (Sheet 1 of 1) dated June 26, 1961, and Bill of Materials dated September 14, 1961, manufactured by Stearns Manufacturing Company, Division Street at 30th, St. Cloud, Minnesota, effective September 27, 1961.

VALVES, PRESSURE-VACUUM RELIEF AND SPILL

Approval No. 162.017/63/0, Morrison Fig. 153B pressure-vacuum relief valve, atmospheric pattern, weight-loaded pressure and vacuum poppets, all brass construction, dwg. No. B4584, dated February 27, 1951, and revised March 12, 1951, and dwg. No. B4585, dated March 6, 1951, approved for size 2½", manufactured by Morrison Bros. Co., Dubuque, Iowa, effective September 26, 1961. (It reinstates and extends Approval No. 162.017/63/0 dated August 24, 1956, published in the Federal Register December 4, 1956.)

Dated: October 26, 1961.

[SEAL] J. A. HIRSHFIELD,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 61–10518; Filed, Nov. 2, 1961; 8:50 a.m.]

Office of the Secretary

[AA 643.3–C]

AMMONIUM SULFATE FROM WEST GERMANY

Determination of No Sales at Less Than Fair Value

OCTOBER 26, 1961.

A complaint was received that ammonium sulfate from West Germany was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that ammonium sulfate from West Germany is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The quantity of ammonium sulfate sold for home consumption is not adequate to furnish a basis for a fair value comparison. After due consideration, it was concluded that the fertilizers, other than ammonium sulfate, sold for home consumption are not similar within the meaning of the Antidumping Act to the synthetic ammonium sulfate sold for exportation to Puerto Rico. As identical ammonium sulfate is sold in adequate quantities for exportation to third countries by the exporter involved, third country price was used as a basis for the determination of fair value.

It was determined that a comparison between purchase price and the weighted-average adjusted third country price was appropriate for the purpose of the fair value comparison.

Purchase price was computed on the basis of the c.i.f., free out, price in bulk to Puerto Rico. From this price were deducted ocean freight, insurance, and trimming charges.

Weighted-average adjusted third country price was computed on the basis of the prices at which sales were made to various third countries during the period proximate to the date of the contracts pursuant to which the involved merchandise was shipped to Puerto Rico From such prices were deducted ocean freight, insurance, the costs of bags, and selling commission. A weighted-average price was determined on the basis of the quantities shipped to each country.

Purchase price was found to be not lower than the weighted-average adjusted third country price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] JAMES POMEROY HENDRICK,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 61–10519; Filed, Nov. 2, 1961; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Change of Location and Temporary Closing of Los Angeles Land Office

OCTOBER 27, 1961.

Notice is hereby given that the Los Angeles Land Office, Bureau of Land Management, Bartlett Building, 215 West Seventh Street, Los Angeles, Calif., will be closed to the public from 3:00 p.m., November 15, 1961, to 10:00 a.m., November 21, 1961, to permit the relocation of the Los Angeles Land Office to a new location and mailing address at P.O. Box 723, 1414 Eighth Street, Riverside, Calif. Personnel of the land office will be available to receive over the counter applications and for consultation purposes on those dates between the hours of 10:00 a.m. and 3:00 p.m. at 1414 Eighth Street, Riverside, Calif.

In accordance with 43 CFR 101.20, all documents presented for filing during the closed period cited above shall be deemed as simultaneously filed as of 10:00 a.m. on November 21, 1961.

ROLLA E. CHANDLER,
Manager, Land Office.

[F.R. Doc. 61–10503; Filed, Nov. 2, 1961; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–123]

CURATORS OF THE UNIVERSITY OF MISSOURI SCHOOL OF MINES AND METALLURGY

Notice of Proposed Issuance of Utilization Facility License

Please take notice that, unless within fifteen days after the publication of this notice in the FEDERAL REGISTER a request for a formal hearing is filed with the United States Atomic Energy Commission by the licensee or a petition to intervene is filed as provided by the Commission's rules of practice (Title 10 CFR Ch. 1, Part 2), the Commission proposes to issue to The Curators of the University of Missouri School of Mines and Metallurgy a facility license substantially as set forth below authorizing operation of a pool-type reactor at power levels up to 10 kilowatts (thermal) on the University of Missouri's campus in Rolla, Mo. Prior to issuance of the license, the reactor will be inspected by representatives of the Commission to determine whether it has been constructed in accordance with the provisions of Construction Permit No. CPRR–44, as amended.

Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Md., or the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details see (1) the application submitted by The Curators of the University of Missouri School of Mines and Metallurgy and amendments thereto, and (2) a hazards analysis prepared by the Research and Power Reactor Safety Branch of the Division of Licensing and Regulation, both on file at the Commission's Public Document Room. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 30th day of October 1961.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
Acting Chief, Research and Power Reactor Safety Branch, Division of Licensing and Regulation.

PROPOSED UTILIZATION FACILITY LICENSE

1. This license applies to the pool-type nuclear reactor (hereinafter referred to as "the reactor") which is owned by the Curators of the University of Missouri School of Mines and Metallurgy (hereinafter referred to as "University of Missouri") and located on University of Missouri's campus in Rolla, Mo., and described in University of Missouri's application for license dated January 28, 1959 and amendments thereto dated February 6, 1959, February 26, 1959, June 12, 1959, July 13, 1959, July 8, 1960, February 3, 1961, March 16, 1961, April 6, 1961, June 7, 1961, September 1, 1961 and October 4, 1961 (hereinafter collectively referred to as "the application") and authorized for construction by Construction Permit No. CPRR–44.

2. Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act") and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The reactor has been constructed in conformity with Construction Permit No. CPRR–44, as amended, and will operate in conformity with the application and in conformity with the Act and the rules and regulations of the Commission;

B. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public;

C. University of Missouri is technically and financially qualified to operate the reactor, to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed activities in accordance with the Commission's regulations;

D. The possession and operation of the reactor and the receipt, possession and use of the special nuclear material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public; and

E. University of Missouri is a nonprofit educational institution and will use the reactor for the conduct of educational activities. University of Missouri is therefore

exempt from the financial protection requirement of subsection 170a of the Act.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses University of Missouri:

A. Pursuant to section 104c of the Act and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities," to possess and operate the reactor as a utilization facility at the designated location in Rolla, Mo., in accordance with the procedures and limitations described in the application and this license;

B. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material," to receive, possess and use in connection with operation of the reactor up to 7.0 kilograms of uranium-235 contained in highly enriched uranium and up to 160 grams of plutonium contained in encapsulated plutonium-beryllium sources; and

C. Pursuant to the Act and Title 10, CFR, Chapter I, Part 30, "Licensing of Byproduct Material," to possess but not to separate such byproduct material as may be produced by operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 30.32 of Part 30, § 50.54 of Part 50 and § 70.32 of Part 70, Title 10, Chapter I, CFR, and to be subject to all applicable provisions of the Act, and to the rules and regulations and orders of the Commission, now or hereafter in effect, and to the additional conditions specified below:

A. University of Missouri shall not operate the reactor at a steady-state power level in excess of 10 kilowatts thermal without prior written authorization from the Commission.

B. The excess reactivity of the core assembly alone or with any fixed experiment in place shall not exceed 0.007: *Provided, however,* That for one period not to exceed seven consecutive days during which calibration of the shim-safety rods and the regulating rod will be conducted following initial criticality and initial core tests, it may be as large as 0.032.

C. The fuel loading shall be such that the total excess reactivity above cold, clean critical shall at no time exceed 0.015, except that it may be as large as 0.032 for the period of seven consecutive days described in 4.B above.

D. University of Missouri shall observe the procedures described in the application pertaining to operations with the reactor shut down which might involve a change in core reactivity.

E. During operation of the reactor and during any other activity which might involve a change in reactor core reactivity, there shall be at least one person, in addition to the reactor operator, in the reactor building to control access to the reactor building and to assist the reactor operator as may be required.

F. The University of Missouri shall not bypass the minimum count rate interlock except during the loading of the core when the minimum count rate required by the interlock cannot be obtained, and then only if an adequate indication of the true neutron level in the reactor core is available with the core nuclear instrumentation so that any change in the neutron population and the reactivity of the core assembly can be readily detected.

G. University of Missouri shall use the room in which the reactor instrumentation console is located solely for activities associated with operation of the reactor and related student training.

H. Not more than three months shall elapse between meetings of the University of Missouri's Safeguards Committee for the purpose of reviewing safety aspects of the operation of the reactor and the experiments associated therewith.

I. In addition to those otherwise required under this license and applicable regulations, University of Missouri shall keep the following records:

1. Reactor operating records, including power levels.

2. Records of in-pile irradiations.

3. Records showing radioactivity released or discharged into the air or water beyond the effective control of University of Missouri as measured at the point of such release or discharge.

4. Records of emergency reactor scrams, including reasons for emergency shutdowns.

J. University of Missouri shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the operation of the reactor.

K. As promptly as practicable, but no later than 60 days after the initial criticality of the reactor, University of Missouri shall submit a written report to the Commission describing the measured values of the operating conditions or characteristics listed below and evaluating any significant variation of a measured value from the corresponding predicted value:

(1) Maximum excess reactivity of the reactor, not including the worth of control rods or other control devices such as burnable poison strips or soluble poison, or any experiments;

(2) Total control rod worth;

(3) Minimum shutdown margin both at room and operating temperature;

(4) Maximum worth of the single control rod of highest reactivity value; and

(5) Maximum total and individual worth of any fixed or movable experiments inserted in the reactor.

L. The University of Missouri shall promptly submit a written report to the Commission whenever, during operation of the reactor subsequently to initial criticality, any of the operating conditions or characteristics of the reactor, including those described in paragraph 4K above and the application, which might affect nuclear safety, is observed to vary significantly from its predicted value.

5. Pursuant to § 50.60 of the regulations in Title 10, CFR, Chapter 1, Part 50, the Commission has allocated, in Construction Permit No. CPRR-44, as amended, to University of Missouri for use in connection with operation of the reactor 7.0 kilograms of uranium-235 contained in highly enriched uranium and 160 grams of plutonium contained in plutonium-beryllium sealed sources.

6. This license is effective as of the date of issuance and shall expire at midnight November 20, 1979.

Date of Issuance: October 30, 1961.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
Acting Chief, Research and Power Reactor Safety Branch, Division of Licensing and Regulation.

[F.R. Doc. 61-10464; Filed, Nov. 2, 1961; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 11654]

AIR LINE PILOTS ASSOCIATION AND SOUTHERN AIRWAYS, INC.

Enforcement Proceeding; Notice of Postponement of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled proceeding now assigned to be heard on November 29 is postponed to November 30, 1961, 10 a.m., e.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., October 31, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61-10532; Filed, Nov. 2, 1961; 8:52 a.m.]

[Docket No. 13122]

SERVICE TO COLUMBUS, NEBR., INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on November 14, 1961 at 10 a.m., e.s.t., in Room 803, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Walter W. Bryan.

Dated at Washington, D.C., October 31, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61-10533; Filed, Nov. 2, 1961; 8:52 a.m.]

[Docket Nos. 13114, 13144; Order No. E-17656]

CONTINENTAL AIR LINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of October, 1961.

By tariff revisions marked to become effective November 1, 1961, Continental Air Lines, Inc. (Continental) proposes to reduce freight rates on commodities involving a significant volume of its traffic between Chicago and Los Angeles. This is accomplished by replacing a number of current specific commodity groups with new groups. In the eastbound direction from Los Angeles to Chicago, the rates proposed for Groups 31, 32, and 33 are identical and are approximately 5 percent below the rates currently applied by Continental to the bulk of the commodities included within the three Groups. The eastbound rates at the 100 pound level are equivalent to the lowest rates now in effect on any other carrier or to those which have recently been in effect in this market. Continental also proposes to maintain a series of weight breaks at 1,000, 2,000, 3,000, 5,000, and 10,000 pounds. In addition, Continental proposes to lower eastbound rates on flowers at all weight breaks above 100 pounds, thereby substantially increasing volume spreads.

In the westbound direction from Chicago to Los Angeles, the carrier proposes two levels of rates, effecting reductions from its present rates for all specific commodities ranging from approximately 25 to 40 percent. The rates proposed again equal the lowest rates currently in effect, those for Group 32 being equivalent at the 100 pound weight break to the class 4 rate recently put into effect

by The Flying Tiger Line Inc. (Tiger) and those for Group 33 equaling Tiger's lower class 5 rate, as well as the Group 565 rate recently published by United Air Lines, Inc. and met by American Airlines, Inc. As in the case of the proposed eastbound rates, Continental proposes to maintain a series of weight breaks. The commodities listed in Group 33 to which the rates would apply include some for which Tiger, American, and United apply higher rates,

Tiger has filed a complaint against Continental's proposed tariff, and requests investigation and suspension. In summary, the complaint alleges that the proposed rates are unreasonably low to the extent that they undercut Tiger's effective rates on less dense commodities and at the higher weight breaks; that they are discriminatory and constitute unfair competition because reductions are confined to that part of Continental's route competitive with Tiger.

Upon consideration of the matters of record the Board finds that the rates westbound from Chicago to Los Angeles for Group 33 proposed by Continental to apply to carriage of the commodities listed in the appendix hereto may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and should be investigated. We recognize that the proposed rates meet those now in effect for most of the commodities. However, Continental would extend their application so as to include other commodities to which a higher level of rates is currently being applied in westbound carriage, and has furnished no basis upon which to justify such further reductions. In view of the dilution of carrier revenues which might ensue from the application of the proposed rates to those commodities set forth in the appendix hereto and the absence of support for these additional reductions, the Board has further concluded to suspend these portions of the tariff revisions and defer their use pending investigation.

The Board has concluded that investigation is not warranted with respect to the eastbound rates proposed at the 100 pound weight break from Los Angeles to Chicago since they are equivalent to rates which are now or have recently been in effect for the commodities in question. We likewise conclude that the rates proposed both eastbound and westbound at the various weight breaks above 100 pounds do not raise questions which warrant investigation in view of the fact that the volume spreads involved are equivalent either to those provided in Continental's now effective tariff or to those in effect on other carriers.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the rates and provisions described in Appendix A below, are, or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates and provisions.

2. Pending hearing and decision by the Board, the rates and provisions described in Appendix A below are suspended and their use deferred to and including January 29, 1962, unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission by the Board.

3. The complaint of The Flying Tiger Line Inc. in Docket 13114 to the extent granted is consolidated herein.

4. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated.

5. Copies of this order shall be filed with the tariff and shall be served upon Continental Airlines, Inc. and The Flying Tiger Line Inc. which are made parties to the proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

APPENDIX A

On 27th, 28th, and 29th Revised Pages 131 of Agent B. H. Smith's Official Air Freight Specific Commodity Tariff No. 5-B, C.A.B. No. 12, the rates from Chicago, Ill., to Los Angeles, Calif., via routing "CO," only insofar as they apply on the following commodities in Commodity Group No. 33:

Advertising matter, store or window, excluding ink, pencils, pens, pen refills and parts of pencils or pens.
Clothing and footwear, not on hangers or racks, and excluding hats or millinery.
Decorative greens, excluding cut flowers.
Nursery stock, namely, trees, shrubs, or vines, grown in the field, excluding growing plants in pots or tubs and rooted cuttings.
Photographic or projection instruments.
Textile articles, viz.:

Awnings.	Napkins.
Bags.	Netting.
Bandaging.	Padding.
Batting.	Sails.
Bed clothes.	Sailcloth.
Belting.	Table coverings.
Curtains.	Tapestries.
Draperies.	Tents.
Floor coverings.	Toweling.
Furniture coverings.	Upholstery cloth.
Hammocks.	Wall coverings.

[F.R. Doc. 61-10534; Filed, Nov. 2, 1961; 8:52 a.m.]

CIVIL SERVICE COMMISSION

POSITIONS FOR WHICH THERE IS DETERMINED TO BE A MANPOWER SHORTAGE

Notice of Listing

Under the provisions of Public Law 86-587, the Civil Service Commission has determined that there is a manpower shortage for the following positions:

1. Education Specialist (Swahili Language), GS-1710-9, U.S. Army Language School, Presidio of Monterey, California.
Effective date: August 30, 1961.

2. Executive Director, GS-17, District of Columbia Redevelopment Land Agency, Washington, D.C., for which qualifications requirements include professional urban planning.
Effective date: October 5, 1961.

Travel and transportation expenses may be paid for appointees to their first duty station for the positions as listed above.

Any such payments as a result of this determination must be made in accordance with travel regulations issued by the Bureau of the Budget.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WARREN B. IRONS,
Executive Director.

[F.R. Doc. 61-10531; Filed, Nov. 2, 1961; 8:52 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP62-58]

COLORADO INTERSTATE GAS CO.

Notice of Application and Date of Hearing

OCTOBER 30, 1961.

Take notice that on September 7, 1961, Colorado Interstate Gas Company (Applicant), Colorado Springs National Bank Building, Colorado Springs, Colorado, filed in Docket No. CP62-58 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas on an interruptible basis to Kansas-Colorado Utilities, Inc. (Kansas-Colorado) from the Hugoton Field, Stanton County, Kansas, commencing upon issuance of authorization in this docket and terminating on April 30, 1962, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its minimum gas purchase obligations are temporarily in excess of its system requirements, due primarily to the delay of certificate authority for its expansion program in Docket No. G-16904 (Provo project) presently in rehearing. Sales in that application were initially proposed to commence during the 1959-1960 heating season and have now been deferred until January 1963. As a result Applicant has been placed in a position of not being able to take the minimum volumes of take-or-pay-for gas under all of its gas purchase or lease agreements.

Applicant proposes to sell and deliver to Kansas-Colorado an estimated quantity of 800,000 Mcf of natural gas with maximum daily deliveries limited to 6,000 Mcf. The subject deliveries will be made by means of existing facilities and no new facilities will be necessary.

This matter is one that should be disposed of as promptly as possible under

the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held November 30, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 24, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-10522; Filed, Nov. 2, 1961; 8:50 a.m.]

[Docket No. CP62-53]

EL PASO NATURAL GAS CO.

Notice of Application and Date of Hearing

OCTOBER 30, 1961.

Take notice that on August 28, 1961, El Paso Natural Gas Co. (Applicant), P.O. Box 1492, El Paso, Tex., filed an application in Docket No. CP62-53, pursuant to section 7(b) of the Natural Gas Act, seeking permission and approval to abandon certain main line tap facilities on Applicant's 26-inch O.D. main transmission pipeline in Garfield County, Colorado, all as more fully set forth in the application on file with the Commission and open to public inspection.

The subject facilities, authorized by the Commission's order issued September 24, 1958, in Docket No. G-12792 (20 FPC 382) were utilized to receive gas purchased from Beehive Uranium Corporation and Standard Uranium Corporation, Operator, which gas was produced from two wells in the Garmesa Field, Garfield County, Colorado.

Applicant states that due to insufficient production capacity, both wells were plugged and abandoned, and that further exploration and production is not anticipated in the Garmesa Field at this time; therefore, Applicant proposes to abandon the subject facilities.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 5, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 22, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-10523; Filed, Nov. 2, 1961; 8:50 a.m.]

[Docket No. CP62-87]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application and Date of Hearing

OCTOBER 30, 1961.

Take notice that on October 9, 1961, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago 3, Illinois, filed in Docket No. CP62-87 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of meter stations, lateral pipelines, and taps on Applicant's existing transmission system to enable it to take into its certificated main pipeline system natural gas which will be purchased from producers thereof during the calendar year 1962, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this proposal is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various areas generally coextensive with said system.

The total cost for all projects for which authorization is sought in this "budget-type" application is stated to be not over $3,500,000, with no single project to exceed a cost of $500,000, with financing from funds on hand.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 7, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 27, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-10524; Filed, Nov. 2, 1961; 8:51 a.m.]

[Docket Nos. RI62-115—RI62-122]

SUN OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

OCTOBER 27, 1961.

Sun Oil Company, Docket No. RI62-115; H. L. Moses, Docket No. RI62-116; Lucy Moses, Docket No. RI62-117; William L. Hernstadt, Docket No. RI62-118; Midwest Oil Corporation (Operator), et al., Docket No. RI62-119; Gulf Oil Corporation (Operator), et al., Docket No. RI62-120; Pan American Petroleum Corporation, Docket No. RI62-121; Humble Oil & Refining Company, Docket No. RI62-122.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI62-115	Sun Oil Co., 1608 Walnut Street, Philadelphia 3, Pa.	23	13	Texas Eastern Trans. Corp. (Carthage Field, Panola County, Tex.) (R.R. District No. 6).	$895	9-27-61	11- 1-61	4- 1-62	[2] 15.0	15.2	RI61-122
RI62-115	Sun Oil Co	91	6	Texas Eastern Trans. Corp. (Hidalgo Field, Hidalgo County, Tex.) (R.R. District No. 4).	38	9-27-61	11- 1-61	4- 1-62	[2] 15.0	15.2	RI61-139
RI62-116	H. L. Moses, c/o Thomas V. McMahan, Attorney, 2100 First City National Bank Building, Houston 2, Tex.	1	8	El Paso Natural Gas Co. (Amacker-Tippett Field, Upton County, Tex.) (R.R. District No. 7c).	4,324	9-28-61	10-29-61	3-29-62	[2] 8.108	13.68225	
RI62-116	H. L. Moses	2	5	do	1,088	9-28-61	10-29-61	3-29-62	[2] 10.5	15.5	
RI62-117	Lucy Moses, c/o Thomas V. McMahan, Attorney, 2100 First City National Bank Building, Houston 2, Tex.	2	5	do	1,088	9-28-61	10-29-61	3-29-62	[2] 10.5	15.5	
RI62-117	Lucy Moses	1	8	do	4,324	9-28-61	10-29-61	3-29-62	[2] 8.108	13.68225	
RI62-118	Wm. L. Hernstadt c/o Thomas V. McMahan, Attorney, 2100 First City National Bank Building, Houston 2, Tex.	1	8	do	2,162	9-28-61	10-29-61	3-29-62	[2] 8.108	13.68225	
RI62-118	Wm. L. Hernstadt	2	5	do	541	9-28-61	10-29-61	3-29-62	[2] 10.5	15.5	
RI62-119	Midwest Oil Corp. (Operator), et al. 1700 Broadway, Denver 2, Colo.	14	3	United Fuel Gas Co. (Ellis Field, Acadia Parish, La.) (Southern La.).	3,049	9-28-61	11- 1-61	4- 1-62	[3] 19.9	20.3	RI61-251
RI62-119	Midwest Oil Corp. (Operator), et al.	15	3	United Fuel Gas Co. (Branch Field, Acadia Parish, La.) (Southern La.).	1,753	9-28-61	11- 1-61	4- 1-62	[3] 19.9	20.3	RI61-251
RI62-119	do	20	6	United Fuel Gas Co. (Ellis Field, Acadia Parish, La.) (Southern La.).	1,810	9-28-61	11- 1-61	4- 1-62	[3] 19.9	20.3	RI61-251
RI62-120	Gulf Oil Corp. (Operator), et al., P.O. Drawer 2100, Houston 1, Tex.	124	7	United Fuel Gas Co. (SE. Houma Field, Terrebonne Parish, La.). (Southern La.).	1,906	9-28-61	11- 1-61	4- 1-62	[3] 19.9	20.3	RI61-170
RI62-120	Gulf Oil Corp. (Operator), et al.	125	8	United Fuel Gas Co. (NE. Payne Field, Acadia Parish, La.) (Southern La.).	1,216	9-28-61	11- 1-61	4- 1-62	[3] 19.9	20.3	RI61-170
RI62-121	Pan American Petroleum Corp., P.O. Box 591, Tulsa 2, Okla.	275	3	H. L. Hunt, et al. (Whelan Field, Harrison County, Tex.) (R.R. District No. 6).	293	9-28-61	11- 1-61	4- 1-62	[2] 12.5	12.7	RI61-192
RI62-121	Pan American Petroleum Corp.	308	1	H. L. Hunt, et al. (North Lansing Field, Harrison County, Tex.) (R.R. District No. 6).	38	9-28-61	11- 1-61	4- 1-62	[2] 14.5	14.7	RI61-491
RI62-122	Humble Oil & Refining Co., P.O. Box 2180, Houston 1, Tex.	210	3	El Paso Natural Gas Co. (East La Barge Field, Lincoln and Sublette Counties, Wyo.).	10,698	9-28-61	11- 1-61	4- 1-62	{[3] [4] 15.0 [3] [5] 15.384	[4] 16.0 [5] 17.0	

[1] The proposed effective dates are the first day after the required thirty days' notice or, if later, the date requested by respondent.
[2] The pressure base is 14.65 psia.
[3] The pressure base is 15.025 psia.
[4] Gas delivered below 860 psig.
[5] Gas delivered at or above 860 psig.

On October 10, 1961, El Paso Natural Gas Company filed formal protests to the acceptance for filing of the notices of proposed increased rates by H. L. Moses, Lucy Moses and William L. Hernstadt stating that the filings unilaterally propose increased rates without the contractual consent of El Paso Natural Gas Company, and are without basis in law or fact.

The proposed changes in rates filed by Sun Oil Company, Midwest Oil Corporation (Operator), et al., Gulf Oil Corporation (Operator), et al., Pan American Petroleum Corporation, and Humble Oil & Refining Company are periodic increases. The proposed changes in rates filed by H. L. Moses, Lucy Moses and William L. Hernstadt are favored-nation increases. The proposed changes, except that designated as Supplement No. 3 to Pan American Petroleum Corporation's FPC Gas Rate Schedule No. 275, exceed the applicable area price level set forth in the Commission's Statement of General Policy No. 61–1 and the amendments thereto. Pan American Petroleum Corporation's increased rate is below the applicable ceiling level, but should be suspended in order to maintain the contractual differential between such increased rate and the buyer's resale rate, which has been suspended in Docket No. RI62–136.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decision thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37) on or before December 11, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61–10502; Filed, Nov. 2, 1961; 8:46 a.m.]

[Project No. 2227]

NENANA RIVER NO. 1, SLAGLE HYDROELECTRIC PROJECT, ALASKA

Land Withdrawal; Correction

OCTOBER 31, 1961.

By withdrawal notice of October 5, 1961, published in 26 F.R. 9607, of October 11, 1961, this Commission gave notice of the reservation of approximately 840 acres of United States lands for Project No. 2227 pursuant to the filing of an application for major license on April 19, 1961, by Mr. John Chandler Slagle, John Slagle Electric Power, Nenana, Alaska. This notice reserved "All lands of the United States lying within the boundaries of Project No. 2227 as delimited upon map Exhibit K, entitled 'John Slagle Electric Power, Nenana, Alaska, Exhibit "K", Project Features' as filed in the office of the Federal Power Commission on April 19, 1961."

A comparison of the protractions shown on this map exhibit with Bureau of Land Management protraction diagrams, of the unsurveyed lands adjacent to the Nenana River, indicates the exhibit is in error insofar as it relates to T. 13 S., R. 7 W.

Therefore the lands in T. 13 S., R. 7 W. are hereby adjusted according to the Bureau of Land Management protraction as described below:

FAIRBANKS MERIDIAN

NENANA RIVER (NEAR HEALY)

Fourth Judicial District

T. 13 S., R. 7 W.,
Section 5: SE¼NW¼, W½NW¼, E½SW¼, W½SE¼;
Section 6: NE¼NE¼;
Section 8: N½NE¼, SE¼NE¼;
Section 9: SW¼NW¼, W½SW¼.

The area reserved remains as previously noted. Map exhibit (FPC No. 2227–5) provided with the October 5 notice will be retained for use of the public only insofar as it relates to T. 12 S., R. 7 W.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61–10525; Filed, Nov. 2, 1961; 8:51 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 61–AL–2]

PROPOSED ALTERATION OF RADIO ANTENNA STRUCTURE

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal to interested persons for aeronautical comment and has conducted a study to determine its effect upon the safe and efficient utilization of airspace: The Trans-Alaskan Telephone Company, Anchorage, Alaska, proposes to increase by 40 feet the overall height of an existing radio antenna structure near King Salmon, Alaska, at latitude 58°40′43″ north, longitude 156°39′41″ west. The new overall height of the structure would be 158 feet above mean sea level (120 feet above ground).

Objections were made in response to the circularization by the Department of the Air Force and Pacific Northern Airlines, on the basis that the proposed increase in height of this antenna structure would be a physical obstruction to air navigation, penetrating the 7:1 transition surface of this Agency's TSO–N18 and the Department of the Air Force criteria; it would require an increase in the GCA (ground controlled approach) ceiling weather minimum from 200 feet to 300 feet and it would preclude lowering the ILS Instrument Approach Procedure ceiling weather minimum from 300 feet to 200 feet when the low frequency radio range tower structure is removed as planned. At the FAA Anchorage Informal Airspace Meeting, the Department of the Air Force, Pacific Northern Airlines and Northern Consolidated Airlines objected to the proposed increase in height of this structure on the same basis as stated above.

The proposed structure would be located 1,125 feet south of Runway 11–29 centerline and approximately 300 feet inboard from the west end of Runway 11–29 of the King Salmon, Alaska, Airport. The Department of the Air Force reported that the proposed increase in height of this structure would require an increase in the GCA Instrument Approach Procedure ceiling weather minimum from 200 feet to 300 feet. At the present time, the ILS approach ceiling weather minimum at this airport is 300 feet. When the low frequency radio range structure is removed as planned, it will permit the ILS approach ceiling weather minimum at this airport to be reduced from 300 feet to 200 feet, providing that the proposed increase in height of this antenna structure is not effected.

The King Salmon Airport is used by the Department of the Air Force and three scheduled air carriers; it is the hub for commercial and private aircraft operating in the Bristol Bay area. During fiscal year 1961, there were 6,492 Instrument Operations and 1,338 Instrument Approaches at the King Salmon Airport. A substantial number of these Instrument Approaches were conducted when the ceiling was reported at less than 300 feet. The nearest alternate airport for large aircraft is at Anchorage, Alaska, approximately 250 miles distant.

The Agency study disclosed that the proposed structure, or any structure at a height exceeding 134 feet above mean sea level at the proposed site, would derogate the established GCA ceiling weather minimum and preclude the planned reduction in ILS approach ceiling weather minimum, and thus would have a substantial adverse effect upon aeronautical operations at this airport.

No other aeronautical operations, procedures or minimum flight altitudes would be affected by the proposed structure.

Therefore, pursuant to the authority delegated to me by the Administrator (14 CFR 626.33; 26 F.R. 5292), it is concluded that the proposed structure, at the location and mean sea level specified herein, or any structure exceeding 134 feet MSL in overall height at this location, would have a substantial adverse effect upon aeronautical operations, procedures, and minimum flight altitudes and it is hereby determined that the proposed structure, or any structure at this location higher than 134 feet MSL, would be a hazard to air navigation.

This determination is effective as of the date of issuance and will become final 30 days thereafter, provided that no appeal herefrom under § 626.34 (26 F.R. 5292) is granted. Unless otherwise revised or terminated a final determination hereunder that a structure at any height not exceeding 134 feet MSL at this location would not be a hazard to air navigation will expire 18 months after its effective date or upon earlier abandonment of the construction proposal (§ 626.35; 26 F.R. 5292).

Issued in Washington, D.C., on October 25, 1961.

OSCAR W. HOLMES,
Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 61–10497; Filed, Nov. 2, 1961; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812–1427]

AXE-HOUGHTON STOCK FUND, INC.

Notice of Filing of Application for Order Exempting Proposed Transaction From Provisions

OCTOBER 27, 1961.

Notice is hereby given that Axe-Houghton Stock Fund, Inc. (Tarrytown, N.Y.) ("Applicant"), of Tarrytown, New York, a Delaware corporation and a management open-end diversified investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 17(b) of the Act for an order of the Commission exempting from the provisions of section 17(a) of the Act a certain transaction as hereinafter set forth. All persons are referred to the application on file with the Commission for a complete statement thereof.

It is proposed that Applicant sell to Bernard J. Salembier 600 shares of the preferred stock of Katzenbach & Warren, Inc. ("K&W"), a small unlisted manufacturing concern, at $53 per share, for an aggregate sale price of $31,800, representing the par value of such stock plus approximately one-half of the presently accrued dividends thereon. Salembier is to purchase such stock for his own account and for investment.

K&W has three classes of equity securities: common stock, class A stock, and preferred stock; Applicant now owns 59.1 percent, 72.5 percent, and 71.4 percent of the outstanding stock of each respective class. The following table indicates Applicant's holdings in each such class, the price per share, and the aggregate cost of the shares to Applicant:

Class of security	Number of shares	Price per share	Aggregate cost
Common	25,000	$1	$25,000
Class A	18,000	5	90,000
Preferred	600	50	30,000
Total			145,000

All of such securities were purchased by Applicant directly from K&W. In the opinion of the board of directors of Applicant, their present value is their original cost to Applicant.

The K&W preferred stock has a par value of $50 per share and a 6 percent cumulative dividend preference, among certain other rights. No dividends have been paid thereon, and K&W cannot properly pay these accrued dividends at this time, so far as Applicant is aware, by reason of the requirements of Section 58 of the New York Stock Corporation Law, prohibiting the payment of any dividend unless the value of the corporation's assets remaining after such payment shall be at least equal to the aggregate amount of the corporation's debts and liabilities, including its capital. Applicant has no reason to believe that K&W will legally be able to pay any dividends in the immediate future.

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of an affiliated person of a registered investment company from purchasing any security from such registered company. K&W is an affiliated person of Applicant, and Salembier is an affiliated person of K&W in that he is a vice president thereof, presently holding 6,950 shares of its common stock, 2,174 shares of its class A stock, and 240 shares of its preferred stock. Under section 17(b) of the Act, the Commission shall grant an application for exemption of a proposed transaction from the provisions of section 17 (a) if it finds that the terms thereof are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and with the general purposes of the Act.

Notice is further given that any interested person may, not later than November 13, 1961, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issue of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–10508; Filed, Nov. 2, 1961; 8:47 a.m.]

[File No. 1–3842]

BLACK BEAR INDUSTRIES, INC.

Order Summarily Suspending Trading

OCTOBER 30, 1961.

The common stock, par value 15 cents a share, of Black Bear Industries, Inc. (formerly Black Bear Consolidated Mining Co.) being listed and registered on the San Francisco Mining Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934 that trading in said security on the San Francisco Mining Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, October 31, 1961, to November 9, 1961, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–10509; Filed, Nov. 2, 1961; 8:47 a.m.]

TARIFF COMMISSION

TARIFF CLASSIFICATION STUDY

Hearing on Proposed First Supplemental Report

Under section 101(b), Title 1, Customs Simplification Act of 1954, as amended, and section 332 of the Tariff Act of 1930.

The United States Tariff Commission hereby gives notice that on November 20, 1961, a public hearing will be held for the purpose of receiving the views of interested parties with respect to a proposed first supplemental report to accompany the Tariff Classification Study, issued on October 31, 1961.

The Tariff Classification Study was prepared pursuant to Title I of the Customs Simplification Act of 1954, as amended (Public Law 768, 83d Congress; Public Law 934, 84th Congress), which directed the Commission to make a comprehensive study of the laws of the United States prescribing the tariff status of imported articles and to submit to the President and to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a revision and consolidation of these laws which, in the judgment of the Commission, would, to the extent practicable—

(1) Establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold.

(2) Eliminate anomalies and illogical results in the classification of articles.

(3) Simplify the determination and application of tariff classifications.

The results of this study, embodied in the Tariff Classification Study, were submitted on November 15, 1960 to the President and to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Since that date, legislative modifications, court decisions, and administrative actions have occurred which affect a number of the provisions in the Tariff Classification Study. The Commission has also received suggestions from interested parties for changes in certain of the headnotes and tariff schedules contained in the Study, both in the form of direct submissions to the Commission and in the form of submissions to the Committee on Ways and Means of the House of Representatives in response to a press release of that Committee on August 15, 1961, calling for written comments from interested parties on the Tariff Classification Study.

The proposed supplemental report to which the hearing announced in this notice will be addressed contains an explanation of the changes in the headnotes and tariff schedules of the Tariff Classification Study which, in the judgment of the Commission, are necessary to bring them up to date, to correct error, or to further the objectives of the Study, as well as a statement of the reasons for not accepting certain of the suggestions received from interested parties.

Copies of the proposed supplemental report may be obtained upon request from the Secretary, United States Tariff Commission, Washington 25, D.C. Copies also will be available for public inspection at the offices of the Commission in Washington, D.C., and New York, N.Y.; at all field offices of the Department of Commerce; and at the offices of collectors of customs and appraisers of merchandise at all headquarters ports of entry in the United States.

Appended hereto is a list of the locations of these offices.

Written statements and appearances. Information and views regarding the proposed supplemental report may be submitted either in writing or by oral testimony at the public hearing, or both. In order to permit, within the limited time and resources available, all interested parties to present information and views in an orderly manner with the least possible inconvenience to all concerned, the Commission has established the following procedure for submission of written statements and the conduct of the hearing:

1. *Written statements in lieu of or in addition to appearance at hearing.* Fifteen (15) copies of written statements must be submitted. Each such statement should be submitted as early as possible, and, in order to assure due consideration, must be submitted not later than December 1, 1961.

NOTE: Interested parties are urged to present information and views in writing in lieu of appearances at the hearing; such statements will be given the same consideration as oral testimony.

2. *Scope of written statements and oral testimony.* Written statements and oral testimony must be limited to the contents of the proposed supplemental report. Submissions which deal with matters other than those contained in the proposed supplemental report or which are aimed at seeking increases or reductions in existing tariff rates which are not incidental to the accomplishment of the purposes of the study, whether or not the product or products are the subject of attention in the proposed supplemental report, are not relevant and will not be entertained.

3. *Appearances at the public hearing.* The following information and instructions should be carefully noted by any interested party intending to appear at the public hearings:

a. Request to appear at the hearing must be filed in writing with the Secretary of the Commission not later than November 15, 1961. Any such request must include:

(1) The particular subject matter contained in the proposed supplemental report on which testimony will be presented, together with a description, where appropriate, of the article or articles to which the testimony will relate.

(2) The name and represented organization of any witness or witnesses who will testify, and the name, address, telephone number, and organization of the person filing the request.

(3) A brief indication of the position to be taken concerning the particular subject matter contained in the proposed supplemental report to which the testimony will be addressed.

(4) A careful estimate of the time desired for presentation of oral testimony by all witnesses for whom the request is filed.

NOTE: The Commission reserves the right to set the time within which a witness must complete his statement. In this connection, experience in previous extensive hearings shows that, in most cases, essential information can be effectively presented orally in a period of from 15 to 30 minutes. Because of the limited time available, parties desiring an allowance of time in excess of such an amount should set forth the special circumstances which they believe support a grant of additional time. Witnesses may supplement oral testimony with written statements of any length.

b. The Secretary of the Commission shall be promptly notified of any changes in a request for appearance as originally filed.

c. It is suggested that parties who have a common interest in one or more of the provisions of the proposed supplemental report endeavor to arrange a consolidated presentation of information and views.

4. *Time and conduct of hearing.* a. The public hearing on the proposed supplemental report will begin at 10:00 a.m. on Monday, the 20th day of November 1961, in the Hearing Room of the Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. In the event that the hearing requires more than one day for completion, the continuation thereof will commence at 10:00 a.m. on succeeding days as scheduled by the Commission until completed. The Commission will sit at the hearing from 10:00 a.m. until 12:30 and 2:00 until 5:00 p.m.

b. Parties who have properly entered an appearance by November 15, 1961, as indicated in paragraph 3 above, will be individually notified of the date on which they are scheduled to appear. Such notice will be sent as soon as possible after November 15, 1961 (the closing date for requests to appear). Any person who fails to receive such notification by November 17, 1961, should immediately communicate with the office of the Secretary of the Commission.

c. Questioning of witnesses will be limited to members of the Commission and of the Commission's staff.

5. *Communications to be addressed to the Secretary.* All communications regarding this public hearing, including requests to appear, should be addressed to the Secretary, United States Tariff Commission, Washington 25, D.C.

Issued: October 31, 1961.

By order of the Commission.

[SEAL] DONN N. BENT, *Secretary.*

Location of Bureau of Customs and Department of Commerce field offices at which copies of the Tariff Commission's proposed first supplemental report to accompany the Tariff Classification Study may be inspected:

Bureau of Customs

Baltimore, Md.	Laredo, Tex.
Boston, Mass.	Los Angeles, Calif.
Bridgeport, Conn.	Louisville, Ky.
Buffalo, N.Y.	Memphis, Tenn.
Charleston, S.C.	Miami, Fla.
Chicago, Ill.	Milwaukee, Wis.
Cleveland, Ohio	Minneapolis, Minn.
Columbus, N. Mex.	Mobile, Ala.
Denver, Colo.	New Orleans, La.
Detroit, Mich.	New York, N.Y.
Duluth, Minn.	Nogales, Ariz.
El Paso, Tex.	Norfolk, Va.
Galveston, Tex.	Ogdensburg, N.Y.
Great Falls, Mont.	Pembina, N. Dak.
Honolulu, Hawaii	Philadelphia, Pa.
Houston, Tex.	Pittsburgh, Pa.
Indianapolis, Ind.	Port Arthur, Tex.
Juneau, Alaska	Portland, Maine
Portland, Oreg.	Savannah, Ga.
Providence, R.I.	Seattle, Wash.
Rochester, N.Y.	St. Albans, Vt.
Rouses Point, N.Y.	St. Louis, Mo.
San Diego, Calif.	St. Thomas, V.I.
San Francisco, Calif.	Tampa, Fla.
San Juan, P.R.	Wilmington, N.C.

Department of Commerce

Albuquerque, N. Mex.	Los Angeles, Calif.
Atlanta, Ga.	Memphis, Tenn.
Boston, Mass.	Miami, Fla.
Buffalo, N.Y.	Minneapolis, Minn.
Charleston, S.C.	New Orleans, La.
Cheyenne, Wyo.	New York, N.Y.
Chicago, Ill.	Philadelphia, Pa.
Cincinnati, Ohio	Phoenix, Ariz.
Cleveland, Ohio	Pittsburgh, Pa.
Dallas, Tex.	Portland, Oreg.
Denver, Colo.	Reno, Nev.
Detroit, Mich.	Richmond, Va.
Greensboro, N.C.	St. Louis, Mo.
Houston, Tex.	Salt Lake City, Utah
Jacksonville, Fla.	San Francisco, Calif.
Kansas City, Mo.	Savannah, Ga.
	Seattle, Wash.

[F.R. Doc. 61-10513; Filed, Nov. 2, 1961; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 31, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37430: *Petroleum oil residuum from Montana points to Minnesota.* Filed by Great Northern Railway Company (No. 1076), and the Northern Pacific Railway Company (No. 121), jointly for themselves. Rates on petroleum oil residuum, in tank-car loads, as described in the application, from Billings, East Billings, Great Falls, Kevin, and Laurel, Mont., to Minneapolis, Minnesota Transfer and St. Paul, Minn.

Grounds for relief: Market competition.

Tariffs: Supplement 36 to Great Northern Railway tariff I.C.C. A-8854 and Supplement 9 to Northern Pacific Railway tariff I.C.C. 9977.

AGGREGATE-OF-INTERMEDIATES

FSA No. 37429: *Passenger fares in the United States.* Filed by E. B. Padrick, Agent (No. 7), for interested rail carriers. Involving basic coach fares for the transportation of persons, between points in the United States.

Grounds for relief: Maintenance of through one factor fares in excess of lower combinations of intermediate fares, due to joint fares reflecting increased factors.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 61-10520; Filed, Nov. 2, 1961; 8:50 a.m.]

[Notice 17]

TRUSTEES OF NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

Applications for Loan Guaranties

OCTOBER 31, 1961.

Notice is hereby given of the filing of the following application under part V of the Interstate Commerce Act:

Finance Docket No. 21808, filed October 30, 1961, by the Trustees of the property of The New York, New Haven and Hartford Railroad Company, Debtor, 54 Meadow Street, New Haven 6, Connecticut, for guaranty by the Interstate Commerce Commission of a loan in amount not exceeding $7,500,000. Applicant's representatives: Fleming James, Jr., and James Wm. Moore, Counsel for Trustees, 54 Meadow Street, New Haven 6, Connecticut. Loan is for the purpose of reimbursing the estate of said Debtor for certain expenditures made from funds of said estate after January 1, 1957, for additions and betterments and other capital improvements.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 61-10521; Filed, Nov. 2, 1961; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—NOVEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during November.

Pages 10377–10420

PART II

FEDERAL REGISTER

VOLUME 26 NUMBER 213

Washington, Friday, November 3, 1961

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS

All of Part 780 of Title 29 of the Code of Federal Regulations except Subpart E (§§ 780.50 to 780.53) is hereby revised in the manner indicated below in order to adapt it to the Fair Labor Standards Amendments of 1961 (secs. 2–14, Public Law 87–30). Subpart E is redesignated as Subpart J and §§ 780.50, 780.51, 780.52, and 780.53 are redesignated as §§ 780.950, 780.951, 780.952, and 780.953, respectively. In addition, clarifying amendments are made in the title of the redesignated subpart and in paragraph (a) of redesignated § 780.950.

As these changes are concerned solely with interpretative rules, neither public procedure nor delay in effective date is required by the Administrative Procedure Act, and they will become effective upon publication in the FEDERAL REGISTER.

1. As revised, all of Part 780 of Title 29 of the Code of Federal Regulations except that provided for in Amendments 2, 3, and 4 of this document reads as follows:

Subpart A—Introductory

Subpart B—Employment in Agricultural or Irrigation Exempted From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(6)

AUTHORITY: §§ 780.0 to 780.820 issued under secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

Subpart A—Introductory

§ 780.0 Purpose of interpretative bulletins in this part.

It is the purpose of the interpretative bulletins in this part to provide an official statement of the views of the Department of Labor with respect to the application and meaning of the provisions of the Fair Labor Standards Act of 1938, as amended, which exempt certain employees from the minimum wage or overtime pay requirements, or both, when employed in agriculture or in certain related activities or in certain operations with respect to agricultural or horticultural commodities.

§ 780.1 General scope of the Act.

The Fair Labor Standards Act is a Federal statute of general application which establishes minimum wage, overtime pay, and child labor requirements that apply as provided in the Act. These requirements are applicable, except where exemptions are provided, to employees in those workweeks when they are engaged in interstate or foreign commerce or in the production of goods for such commerce or are employed in enterprises so engaged within the meaning of definitions set forth in the Act. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act, and with specified recordkeeping requirements contained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 780.2 Exemptions from Act's requirements.

The Act provides a number of specific exemptions from the general requirements described in § 780.1. Some are exemptions from the overtime provisions only. Others are from the child labor provisions only. Several are exemptions from both the minimum wage and the overtime requirements of the Act. Finally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An employer who claims an exemption under the Act has the burden of showing that it applies (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290). Conditions specified in the language of the Act are "explicit prerequisites to exemption" (Arnold v. Kanowsky, 361 U.S. 388). "The details with which the exemptions in this Act have been made preclude their enlargement by implication" and "no matter how broad the exemption, it is meant to apply only to" the specified activities (Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254). Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come "plainly and unmistakably within their terms and spirit" (Phillips v. Walling, 334 U.S. 490; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Arnold v. Kanowsky, 361 U.S. 388).

§ 780.3 Exemptions discussed in this part.

The specific exemptions which the Act provides for employment in agriculture and in certain operations more or less closely connected with the agricultural industry are discussed in this Part 780. These exemptions differ substantially in their terms, scope, and methods of application. Each of them is therefore separately considered in a subpart of this part which, together with this Subpart A, constitutes the official interpretative bulletin of the Department of Labor with respect to that exemption. Exemptions from minimum wages and overtime pay and the subparts in which they are considered include the section 13(a)(6) exemption (agriculture and irrigation) discussed in Subpart B of this part, the section 13(a)(16) exemption (agriculture and livestock auction operations) discussed in Subpart C of this part, the section 13(a)(21) exemption (agricultural employees processing shade-grown tobacco) discussed in Subpart D, the section 13(a)(22) exemption (fruit and vegetable harvest transportation) discussed in Subpart E of this part, the section 13(a)(18) exemption (cotton ginning) discussed in Subpart F of this part, the section 13(a)(17) exemption (country elevators) discussed in Subpart G of this part, and the section 13(a)(10) exemption (operations on agricultural commodities in the "area of production") discussed in Subpart H of this part. An exemption in section 13(d) of the Act from the minimum wage, overtime pay, and child labor provisions for certain homeworkers making holly and evergreen wreaths is discussed in Subpart I of this part. Exemptions from only the overtime provisions under sections 7(c) (specified operations on agricultural commodities), 7(b)(3) (seasonal industries), and 13(b)(5) (outside buyers of certain commodities) are discussed in Subpart J of this part.

§ 780.4 Matters not discussed in this part.

The application of provisions of the Fair Labor Standards Act other than the exemptions referred to in § 780.3 is not considered in this Part 780. Interpretative bulletins published elsewhere in the Code of Federal Regulations deal with such subjects as the general coverage of the Act (Part 776 of this chapter) and of the child labor provisions (Part 4 of this title, Subpart G of this part of which also discusses exemptions from child labor requirements), methods of payment of wages (Part 777 of this chapter), computation and payment of overtime compensation (Part 778 of this chapter), and hours worked (Part 785 of this chapter). Regulations on recordkeeping are contained in Part 516 of this chapter and regulations defining exempt administrative, executive, and professional employees, and outside salesmen are contained in Part 541 of this chapter. Regulations and interpretations on other subjects concerned with the application of the Act are listed in the table of contents to this chapter. Copies of any of these documents may be obtained from any office of the Wage and Hour and Public Contracts Divisions.

§ 780.5 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexami-

nation of an interpretation, that it is incorrect.

§ 780.6 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (Mitchell v. Zachry, 362 U.S. 310; Kirschbaum v. Walling, 316 U.S. 517). Court decisions supporting interpretations contained in this bulletin are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 F.R. 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this bulletin where it appears that they will contribute to a better understanding of the interpretations.

§ 780.7 Reliance on interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (Skidmore v. Swift, 323 U.S. 134.) Some of the interpretations in this part are interpretations of exemption provisions as they appeared in the original Act before amendment in 1949 and 1961, which have remained unchanged because they are consistent with the amendments. These interpretations may be said to have Congressional sanction because "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended. 63 Stat. 920." (Mitchell v. Kentucky Finance Co., 359 U.S. 290; accord, Maneja v. Waialua, 349 U.S. 254.)

§ 780.8 Interpretations made, continued, and superseded by this part.

On and after publication of this Part 780 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as Part 780 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met in the consideration of the exemptions discussed. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this bulletin may be addressed to the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions.

§ 780.9 Related exemptions are interpreted together.

The interpretations contained in the several subparts of this Part 780 consider separately a number of exemptions which affect employees who perform activities in or connected with agriculture and its products. These exemptions deal with related subject matter and varying degrees of relationships between them were the subject of consideration in Congress before their enactment. Together they constitute an expression in some detail of existing Federal policy on the lines to be drawn in the industries connected with agriculture and agricultural products between those employees to whom the pay provisions of the Act are to be applied and those whose exclusion in whole or in part from the Act's requirements has been deemed justified. The courts have indicated that these exemptions, because of their relationship to one another, should be construed together insofar as possible so that they form a consistent whole. Consideration of the language and history of a related exemption or exemptions is helpful in ascertaining the intended scope and application of an exemption whose effect might otherwise not be clear (Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254; Bowie v. Gonzalez (C.A. 1), 117 F. 2d 11). In the interpretations of the several exemptions discussed in the various subparts of this Part 780, effect has been given to these principles and each exemption has been considered in its relation to others in the group as well as to the combined effect of the group as a whole.

Subpart B—Employment in Agriculture or Irrigation Exempted From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(6)

INTRODUCTORY

§ 780.100 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart B together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of sections 3(f) and 13(a)(6) of the Fair Labor Standards Act of 1938, as amended. Section 3(f) defines "agriculture" as the term is used in the Act. Section 13(a)(6) provides exemption from the minimum wage and overtime pay provisions of the Act for employees employed in "agriculture", as so defined. It also provides a similar exemption for employees employed in connection with certain irrigation operations. As appears more fully in Subpart A of this Part 780, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act.

§ 780.101 Matters discussed in this and other subparts.

Those principles and rules which govern the interpretation of the meaning and application of the Act's definition of "agriculture" in section 3(f) and of the terms used in it are set forth in this Subpart B. Included is a discussion of that portion of section 3(f) which refers to forestry or lumbering operations. Also included is a discussion of the application of the definition in section 3(f) to the employees of farmers' cooperative associations. Although the application to the exemption provided by section 13(a)(6) of the general principles and rules for interpretation of the definition is fully discussed, reference must be made to other subparts of this Part 780 for their particular application in the context of other exemptions from the pay provisions of the Act which are related to agriculture and products of agriculture. As noted in those subparts, the official interpretations of section 3(f) of the Act and the terms which appear in it are to be taken into consideration in determining the meaning intended by the use of like terms in particular related exemptions which are provided by the Act.

§ 780.102 Relation of discussion to child labor provisions.

As indicated, this subpart deals with sections 3(f) and 13(a)(6) of the Act.

To the extent that the term "agriculture" as defined in section 3(f) is involved in the section 13(c) child labor exemption, the discussion contained in this subpart is applicable. The meaning and scope of the child labor coverage and exemption provisions are discussed in Subpart G of Part 4 of this title.

STATUTORY PROVISIONS

§ 780.103 "Agriculture" as defined by the Act.

Section 3(f) of the Act defines "agriculture" as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 780.104 Statutory exemptions in sections 13(a)(6) and 13(c).

(a) Section 13(a)(6) of the Act exempts from the minimum wage requirements of section 6 and from the overtime pay requirements of section 7:

any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes.

(b) Section 13(c) exempts from the child labor requirements of section 12:

any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed.

See § 4.123 of Subpart G of Part 4 of this title (the interpretative bulletin on child labor) for a full discussion of the application of this provision insofar as it depends on matters other than the meaning of "agriculture".

PRINCIPLES FOR APPLYING THE SECTION 13(a)(6) EXEMPTION

§ 780.105 The general guides for applying the exemption.

Like other exemptions provided by the Act, the section 13(a)(6) exemption is narrowly construed (Phillips, Inc. v. Walling, 334 U.S. 490; Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Fleming v. Swift & Co., 41 F. Supp. 825; Miller Hatcheries v. Boyer, 131 F. 2d 283; Walling v. Friend, 156 F. 2d 429; see also § 780.2 of Subpart A of this Part 780). An employer who claims the exemption has the burden of showing that it applies. (See § 780.2.) The section 13(a)(6) exemption for employment in agriculture is intended to cover all agriculture, including "extraordinary methods" of agriculture as well as the more conventional ones and large operators as well as small ones. Nevertheless, it was meant to apply only to agriculture. It does not extend to processes that are more akin to manufacturing than to agriculture. Practices performed off the farm by nonfarmers are not within the exemption, except for the irrigation activities specifically described in section 13(a)(6). Practices performed by a farmer do not come within the exemption for agriculture if they are neither a part of farming nor performed by him as an incident to or in conjunction with his own farming operations. These principles have been well established by the courts in such cases as Mitchell v. Budd, 350 U.S. 473; Maneja v. Waialua, 349 U.S. 254; Farmers Reservoir Co. v. McComb, 337 U.S. 755; Addison v. Holly Hill Fruit Products, 322 U.S. 607; Calaf v. Gonzalez, 127 F. 2d 934; Chapman v. Durkin, 214 F. 2d 360; certiorari denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, certiorari denied, 348 U.S. 897; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n, 80 F. Supp. 953, 181 F. 2d 697. When the Congress, in the 1961 amendments, provided special exemptions for some activities which had been held not to be included in the exemption for agriculture (see Subparts D and E of this Part 780), it was made very clear that no implication of disagreement with "the principles and tests governing the application of the present agricultural exemption as enunciated by the courts" was intended (Statement of the Managers on the Part of the House, Conference Report, H. Rep. No. 327, 87th Cong. 1st Sess., p. 18). Accordingly, an employee is considered an exempt agricultural or irrigation employee if, but only if, his work falls clearly within the specific language of section 3(f) or section 13(a)(6).

§ 780.106 Employee basis of exemption under section 13(a)(6).

Section 13(a)(6) exempts "any employee employed in * * *". It is clear from this language that it is the activities of the employee rather than those of his employer which ultimately determine the application of the exemption. Thus the exemption may not apply to some employees of an employer engaged almost exclusively in activities within the exemption, and it may apply to some employees of an employer engaged almost exclsively in other activities. But the burden of effecting segregation between exempt and nonexempt work as between different groups of employees is upon the employer.

§ 780.107 Activities of the employer considered in some situations.

Although the activities of the individual employee, as distinguished from those of his employer, constitute the ultimate test for applying the exemption, it is necessary in some instances to examine the activities of the employer. For example, in resolving the status of the employees of an irrigation company for purposes of the agriculture exemption, the United States Supreme Court found it necessary to consider the nature of the employer's activities (Farmers Reservoir Co. v. McComb, 337 U.S. 755).

§ 780.108 Workweek standard under section 13(a)(6).

The workweek is the unit of time to be taken as the standard in determining the applicability of section 13(a)(6). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week. If in any workweek an employee does only exempt work, he is exempt from the wage and hour provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in one workweek and not in the next. But the burden of effecting segregation between exempt and nonexempt work as between particular workweeks is upon the employer.

§ 780.109 Exempt and noncovered work during a workweek under section 13(a)(6).

The wage and hours requirements of the Act do not apply to an employee during any workweek in which a portion of his activities fall within section 13(a)(6) if all of the remainder of his activities are not covered by the Act.

§ 780.110 Exempt and nonexempt work during the same workweek.

Where an employee in the same workweek performs work which is exempt under this section 13(a)(6) and also engages in work to which the Act applies, not exempt under this or any other section of the Act, he is not exempt that week, and the wage and hour requirements of the Act are applicable (see Mitchell v. Hunt, 263 F. 2d 913; Mitchell v. Maxfield, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 69, 781; Jordan v. Stark Bros. Nurseries, 45 F. Supp. 769; McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n, 80 F. Supp. 953, affirmed 181 F. 2d 697; Walling v. Peacock Corp., 58 F. Supp. 880–883).

§ 780.111 Work exempt under another section of the Act.

The combination ("tacking") of exempt work under section 13(a)(6) with exempt work under another section is permitted. The wage and hour requirements are not considered applicable to an employee who does work within section 13(a)(6) for only part of a workweek if all of the covered work done by him during the remainder of the workweek is within one or more equivalent exemptions under other provisions of the Act. If the scope of such exemptions is not the same, however, the exemption applicable to the employee is equivalent to that provided by whichever exemption provision is more limited in scope. For instance, an employee who devotes part of a workweek to work within section 13(a)(6) and the remainder to work exempt under section 7(c) must receive the minimum wage but is not required to be paid time and one-half for his overtime work during that week. Each activity is tested separately under the applicable exemption as though it

were the sole activity of the employee for the whole workweek in question. The availability of a combination exemption depends on whether the employee meets all the requirements of each exemption which it is sought to combine.

GENERAL SCOPE OF "AGRICULTURE"

§ 780.112 How modern specialization affects the scope of agriculture.

The effect of modern specialization on agriculture has been discussed by the United States Supreme Court as follows:

Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural product become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture (see Farmers Reservoir Co. v. McComb, 337 U.S. 755 cf. Maneja v. Waialua, 349 U.S. 254).

§ 780.113 "Primary" and "secondary" agriculture under section 3(f).

(a) Section 3(f) of the Act contains a very comprehensive definition of the term "agriculture". The definition has two distinct branches (see Farmers Reservoir Co. v. McComb, 337 U.S. 755). One has relation to the primary meaning of agriculture; the other gives to the term a somewhat broader secondary meaning for purposes of the Act (NLRB v. Olaa Sugar Co., 242 F. 2d 714).

(b) First, there is the primary meaning. This includes farming in all its branches. Listed as being included "among other things" in the primary meaning are certain specific farming operations such as cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities and the raising of livestock, bees, furbearing animals or poultry. If an employee is employed in any of these activities, he is exempt regardless of whether he is employed by a farmer or on a farm (Farmers Reservoir Co. v. McComb, supra; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398).

(c) Then there is the secondary meaning of the term. The second branch includes operations other than those which fall within the primary meaning of the term. It includes any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with "such" farming operations (Farmers Reservoir Co. v. McComb, supra; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Maneja v. Waialua, 349 U.S. 254).

(d) Employment not within the scope of either the primary or the secondary meaning of "agriculture" as defined in section 3(f) is not employment in agriculture within the meaning of the section 13(a)(6) exemption. In other words, employees not employed in farming or by a farmer or on a farm are not exempt (Tobin v. Wenatchee Air Service, 10 WH Cases 680 (E.D. Wash.).

EXEMPTION FOR "PRIMARY" AGRICULTURE GENERALLY

§ 780.114 General statement on "primary" agriculture.

The discussion in §§ 780.114–780.136 relates to the activities which exempt an employee who is employed in "agriculture" within its "primary" meaning. Within this meaning of "agriculture", employees employed in the listed activities, generally characterizable as direct farming operations, are exempt without qualification from both the minimum wage and overtime pay provisions.

§ 780.115 Employment in "primary" agriculture is exempt regardless of why or where work is performed.

When an employee is engaged in direct farming operations included in the primary definition of "agriculture", the purpose of the employer in performing the operations is immaterial. For example, where an employer owns a factory and a farm and operates the farm only for experimental purposes in connection with the factory, those employees who devote all their time during a particular workweek to the direct farming operations, such as the growing and harvesting of agricultural commodities, are nevertheless exempt from the Act's wage and hour requirements during that workweek. It is also immaterial whether the agricultural or horticultural commodities are grown in enclosed houses, as in greenhouses or mushroom cellars, or in an open field. Similarly, the mere fact that production takes place in a city or on industrial premises, such as in hatcheries, rather than in the country or on premises possessing the normal characteristics of a farm makes no difference (see Jordan v. Stark Brothers Nurseries, 45 F. Supp. 769; Miller Hatcheries v. Boyer, 131 F. 2d 283; Damutz v. Pinchbeck, 158 F. 2d 882).

"FARMING IN ALL ITS BRANCHES"

§ 780.116 Scope of the statutory term.

The language "farming in all its branches" includes all activities, whether listed in the definition or not, which constitute farming or a branch thereof under the facts and circumstances.

§ 780.117 Listed activities.

Section 3(f), in defining the practices included as "agriculture" in its statutory secondary meaning, refers to the activities specifically listed in the earlier portion of the definition (the "primary" meaning) as "farming" operations. They may therefore be considered as illustrative of "farming in all its branches" as used in the definition.

§ 780.118 Determination of whether unlisted activities are "farming".

Unlike the specifically enumerated operations, the phrase "farming in all its branches" does not clearly indicate its scope. In determining whether an operation constitutes "farming in all its branches", it may be necessary to consider various circumstances such as the nature and purpose of the operations of the employer, the character of the place whether the employee performs his duties, the general types of activities there conducted, and the purpose and function of such activities with respect to the operations carried on by the employer. The determination may involve a consideration of the principles contained in § 780.112. For example, so-called "bird dog" operations of the citrus fruit industry consisting of the purchase of fruit unsuitable for packing and of the transportation and sale of the fruit to canning plants do not qualify as "farming" and, consequently, employees engaged in such operations are not exempt. (See Chapman v. Durkin, 214 F. 2d 360 cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363 cert. denied, 348 U.S. 897.) However, employees gathering the fruit at the groves are exempt because they are engaged in harvesting operations. (For exempt transportation, see Subpart E of this part.)

"CULTIVATION AND TILLAGE OF THE SOIL"

§ 780.119 Operations included in "cultivation and tillage of the soil."

"Cultivation and tillage of the soil" includes all the operations necessary to prepare a suitable seedbed, eliminate weed growth and improve the physical condition of the soil. Thus, grading or leveling land or removing rock or other matter to prepare the ground for a proper seebed or building terraces on farmland to check soil erosion are included. The application of water, fertilizer or limestone to farmland is also included. Irrigation employees not exempt on this ground may be exempt under other provisions. (See in this connection §§ 778.137 et seq. and §§ 780.184 et seq. Also see Farmers Reservoir Co. v. McComb, 337 U.S. 755.) Employees engaged in the commercial production and distribution of fertilizer are not ex-

empt (McComb v. Super-A Fertilizer Works, 165 F. 2d 824).

"DAIRYING"

§ 780.120 "Dairying" as a farming operation.

"Dairying" includes the work of caring for and milking cows or goats. It also includes putting the milk in containers, cooling it, and storing it where done on the farm. The handling of milk and cream at receiving stations is not included. Such operations as separating cream from milk, bottling milk and cream, or making butter and cheese may be exempt as "dairying" under some circumstances, or they may be exempt practices under the "secondary" meaning of the definition when performed by a farmer or on a farm, if they are not performed on milk produced by other farmers or produced on other farms. (See the discussions in §§ 780.137 et seq.)

"AGRICULTURAL OR HORTICULTURAL COMMODITIES"

§ 780.121 General meaning of "agricultural or horticultural commodities".

Section 3(f) of the Act defines as "agriculture" the "production, cultivation, growing and harvesting" of "agricultural or horticultural commodities," and employees employed in such operations are within the section 13(a)(6) exemption. In general, within the meaning of the Act, "agricultural or horticultural commodities" refers to commodities resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: grains, forage crops, fruits, vegetables, nuts, sugar crops, fibre crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugarcane, seed, or any other agricultural or horticultural commodity are engaged in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth.

§ 780.122 Seeds, spawn, etc.

Seeds and seedlings of agricultural and horticultural plants are considered "agricultural or horticultural commodities." Thus, since mushrooms and beans are considered "agricultural or horticultural commodities," the spawn of mushrooms and bean sprouts are also so considered and the production, cultivation, growing and harvesting of mushroom spawn or bean sprouts is "agriculture" within the meaning of section 3(f).

§ 780.123 Wild commodities.

Employees engaged in the gathering or harvesting of wild commodities such as mosses, wild rice, burls and laurel plants, the trapping of wild animals, or the appropriation of minerals and other uncultivated products from the soil are not employed in "the production, cultivation, growing, and harvesting of agricultural or horticultural commodities". However, the fact that plants or other commodities actually cultivated by man are of a species which ordinarily grows wild without being cultivated does not preclude them from being classed as "agricultural or horticultural commodities". Transplanted branches which were cut from plants growing wild in the field or forest are included within the term. Cultivated blueberries are also included.

§ 780.124 Forest products.

Trees grown in forests and the lumber derived therefrom are not "agricultural or horticultural commodities". Christmas trees, whether wild or planted, are also not so considered. It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.160–780.164, which discusses the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute "agriculture". For a discussion of the exemption in section 13(a)(15) of the Act for certain forestry and logging operations in which not more than 12 employees are employed, see Part 788 of this chapter.

§ 780.125 Commodities included by reference to the Agricultural Marketing Act.

(a) Section 3(f) expressly provides that the term "agricultural or horticultural commodities" shall include the commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141–1141j). Section 15(g) of that Act provides: "As used in this act, the term 'agricultural commodity' includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum resin, as defined in the Naval Stores Act, approved March 3, 1923" (7 U.S.C. 91–99). As defined in the Naval Stores Act, "'gum spirits of turpentine' means spirits of turpentine made from gum (oleoresin) from a living tree" and "'gum rosin' means rosin remaining after the distillation of gum spirits of turpentine". The production of these commodities is therefore within the definition of "agriculture".

(b) Since the only oleoresin included within section 15(g) of the Agricultural Marketing Act is that derived from a living tree, the production of oleoresin from stumps or any sources other than living trees is not within section 3(f). If turpentine or rosin is produced in any manner other than the processing of crude gum from living trees, as by digging up pine stumps and grinding them or by distilling the turpentine with steam from the oleoresin within or extracted from the wood, the production of the turpentine or rosin is not included in section 3(f).

(c) Similarly, the production of gum turpentine or gum rosin is not included when these are produced by anyone other than the original producer of the crude gum from which they are derived. Thus, if a producer of turpentine or rosin from oleoresin from living trees makes such products not only from oleoresin produced by him but also from oleoresin delivered to him by others, he is not producing a product defined as an agricultural commodity and employees engaged in his production operations are not exempt. (For an explanation of the inclusion of the word "production" in section 3(f), see § 780.126(b).) It is to be noted, however, that the production of gum turpentine and gum rosin from crude gum (oleoresin) derived from a living tree is exempt when performed at a central still for and on account of the producer of the crude gum. But where central stills buy the crude gum they process and are the owners of the gum turpentine and gum rosin that are derived from such crude gum and which they market for their own account, the production of such gum turpentine and gum rosin is not exempt.

"PRODUCTION, CULTIVATION, GROWING, AND HARVESTING" OF COMMODITY

§ 780.126 "Production, cultivation, growing".

(a) The words "production, cultivation, growing" describe actual raising operations which are normally intended or expected to produce specific agricultural or horticultural commodities. The raising of such commodities is included even though done for purely experimental purposes. The "growing" may take place in growing media other than soil as in the case of hydroponics. The words do not include operations undertaken or conducted for purposes not concerned with obtaining any specific agricultural or horticultural commodity. Thus operations which are merely preliminary, preparatory or incidental to the operations whereby such commodities are actually produced are not within the terms "production, cultivation, growing". For example, employees of a processor of vegetables who are engaged in buying vegetable plants and distributing them to farmers with whom their employer has acreage contracts are not engaged in the "production, cultivation, growing" of agricultural or horticultural commodities. The furnishing of mushroom spawn by a canner of mushrooms to growers who supply the canner with mushrooms grown from such spawn does not constitute the "growing" of mushrooms. Similarly, employees of an employer who is engaged in servicing insecticide sprayers in the farmer's orchard and employees engaged in such operations as the testing of soil or genetics research are not included within the terms. (However, see §§ 780.137 et seq. for possible exemption on other grounds.) The word "production", used in conjunction with "cultivation, growing, and harvesting", refers, in its natural and unstrained meaning, to

what is derived and produced from the soil, such as any farm produce. Thus, "production" as used in section 3(f) does not refer to such operations as the grinding and processing of sugar cane, the milling of wheat into flour, or the making of cider from apples. These operations are clearly the processing of the agricultural commodities and not the production of them (Bowie v. Gonzalez, 117 F. 2d 11).

(b) The word "production" was added to the definition of "agriculture" in order to take care of a special situation—the production of turpentine and gum rosins by a process involving the tapping of living trees. (See S. Rep. No. 230, 71st Cong., 2d Sess. (1930); H.R. Rep. No. 2738, 75th Cong., 3d Sess. p. 29 (1938).) To insure the inclusion of this process within the definition, the word "production" was added to section 3(f) in conjunction with the words "including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended" (Bowie v. Gonzalez, 117 F. 2d 11). It is clear, therefore, that "production" is not used in section 3(f) in the artificial and special sense in which it is defined in section 3(j). It does not exempt an employee merely because he is engaged in a closely related process or occupation directly essential to the production of agricultural or horticultural commodities. To so construe the term would render unnecessary the remainder of what Congress clearly intended to be a very elaborate and comprehensive definition of "agriculture". The legislative history of this part of the definition was considered by the United States Supreme Court in reaching these conclusions in Farmers Reservoir Co. v. McComb, 337 U.S. 755.

§ 780.127 "Harvesting".

(a) The term "harvesting" as used in section 3(f) includes all operations customarily performed in connection with the removal of the crops by the farmer from their growing position (Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; NLRB v. Olaa Sugar Co., 242 F. 2d 714). Examples include the cutting of grain, the picking of fruit, the stripping of bluegrass seed, and the digging up of shrubs and trees grown in a nursery. Employees engaged on a plantation in gathering sugar cane as soon as it has been cut, loading it, and transporting the cane to a concentration point on the farm are engaged in "harvesting" (Vives v. Serralles, 145 F. 2d 552).

(b) The combining of grain is exempt either as harvesting or as a practice performed on a farm in conjunction with or as an incident to farming operations. (See in this connection Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398.) "Harvesting" does not extend to operations subsequent to and unconnected with the actual process whereby agricultural or horticultural commodities are severed from their attachment to the soil or otherwise reduced to possession. For example, the processing of sugar cane into raw sugar (Bowie v. Gonzalez, 117 F. 2d 11, and see Maneja v. Waialua, 349 U.S. 254), or the vining of peas are not included. For a further discussion on the exempt status of vining employees, see § 780.148. While transportation to a concentration point on the farm may be included, "harvesting" never extends to transportation or other operations off the farm. Off-the-farm transportation can only be "agriculture" when performed by the farmer as an incident to his farming operations (Chapman v. Durkin, 214 F. 2d 360 cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363 cert. denied 348 U.S. 897). For further discussion of this point, see §§ 780.153–780.157; §§ 780.167–780.172.

"Raising of Livestock, Bees, Fur-Bearing Animals, or Poultry

§ 780.128 Employment in the specified operations generally.

Employees are employed in the raising of livestock, bees, fur-bearing animals or poultry only if their operations relate to animals of the type named and constitute the "raising" of such animals. If these two requirements are met, it makes no difference for what purpose the animals are raised or where the operations are performed. For example, the fact that cattle are raised to obtain serum or virus or that chicks are hatched in a commercial hatchery does not affect the exempt status of the operations.

§ 780.129 Raising of "livestock".

The meaning of the term "livestock" as used in section 3(f) is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. That Congress did not use this term in its generic sense is supported by the specific enumeration of activities, such as the raising of fur-bearing animals, which would be included in the generic meaning of the word. The term includes the following animals, among others: cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs and hamsters, which are ordinarily used by laboratories for research purposes (Mitchell v. Maxfield, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 69, 781). Fish are not "livestock" (Dunkly v. Erich, 158 F. 2d 1), but employees employed in propagating or farming of fish may be exempt under section 13(a)(5) of the Act, as explained in Part 784 of this chapter.

§ 780.130 What constitutes "raising" of livestock.

The term "raising" employed with reference to livestock in section 3(f) includes such operations as the breeding, fattening, feeding and general care of livestock. Thus, employees exclusively engaged in feeding and fattening livestock in stock pens where the livestock remains for a substantial period of time are engaged in the "raising" of livestock. The fact that the livestock is purchased to be fattened and is not bred on the premises does not characterize the fattening as something other than the "raising" of livestock. The feeding and care of livestock does not necessarily or under all circumstances constitute the "raising" of such livestock, however. It is clear, for example, that animals are not being "raised" in the pens of stockyards or the corrals of meat packing plants where they are confined for a period of a few days while en route to slaughter or pending their sale or shipment. Therefore, employees employed in these places in feeding and caring for the constantly changing group of animals cannot reasonably be regarded as "raising" livestock (NLRB v. Tovrea Packing Co., 111 F. 2d 626, cert. denied 311 U.S. 668; Walling v. Friend, 156 F. 2d 429). Employees of a cattle raisers' association engaged in the publication of a magazine about cattle, the detection of cattle thefts, the location of stolen cattle, and apprehension of cattle thieves are not employed in raising livestock and are not exempt.

§ 780.131 Activities relating to race horses.

Employees engaged in the breeding, raising and training of horses on farms for racing purposes are exempt. Included are such employees as grooms, attendants, exercise boys, and watchmen employed at the breeding or training farm. On the other hand, employees engaged in the racing, training and care of horses and other activities performed off the farm in connection with commercial racing are not exempt. For this purpose, a training track at a race track is not a farm. Where a farmer is engaged in both the raising and commercial racing of race horses, the activities performed off the farm by his employees as an incident to racing, such as the training and care of the horses, are not practices performed by the farmer in his capacity as a farmer or breeder as an incident to his raising operations. Employees engaged in the feeding, care and training of horses which have been used in commercial racing and returned to a breeding or training farm for such care pending entry in subsequent races are exempt.

§ 780.132 Raising of bees.

The term "raising of * * * bees" refers to all of those activities customarily performed in connection with the handling and keeping of bees, including the treatment of disease and the raising of queens.

§ 780.133 Raising of fur-bearing animals.

(a) The term "fur-bearing animals" has reference to animals which bear fur of marketable value and includes, among other animals, rabbits, silver foxes, minks, squirrels, and muskrats. Animals whose fur lacks marketable value, such as albino and other rats, mice, guinea pigs, and hamsters, are not "fur-bearing animals" within the meaning of section 3(f).

(b) The term "raising" of fur-bearing animals includes all those activities customarily performed in connection with breeding, feeding and caring for fur-bearing animals, including the treatment of disease. Such treatment of disease has reference only to disease of the animals being bred and does not refer to the use of such animals or their fur in experimenting with disease or treating diseases in others. The fact that musk-

rats or other fur-bearing animals are propagated in open water or marsh areas rather than in pens does not prevent the raising of such animals from constituting the "raising of fur-bearing animals". Where wild fur-bearing animals propagate in their native habitat and are not raised as above described, the trapping or hunting of such animals and activities incidental thereto are not exempt.

§ 780.134 Raising of poultry in general.

(a) The term "poultry" includes domesticated fowl and game birds. Ducks and pigeons are included. Canaries and parakeets are not included.

(b) The "raising" of poultry includes the breeding, hatching, propagating, feeding and general care of poultry. Slaughtering, which is the antithesis of "raising", is not included. To constitute "agriculture", slaughtering must come within the secondary meaning of the term "agriculture". The temporary feeding and care of chickens and other poultry for a few days pending sale, shipment or slaughter is not the "raising" of poultry. However, feeding, fattening and caring for poultry over a substantial period may constitute the "raising" of poultry.

§ 780.135 Contract arrangements for raising poultry.

Feed dealers and processors sometimes enter into contractual arrangements with farmers under which the latter agree to raise to marketable size baby chicks supplied by the former who also undertake to furnish all the required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement, the activities of the farmers and their employees in raising the poultry are clearly exempt. The activities of the feed dealer or processor, on the other hand, are not "raising of poultry" and employees engaged in them cannot be exempt on that ground. Employees of the feed dealer or processor who perform work on a farm as an incident to or in conjunction with the raising of poultry on the farm and engage in no nonexempt activities during the workweek may, however, be exempt as employed in "secondary" agriculture (see §§ 780.137 et seq., and Johnston v. Cotton Producers Ass'n., 244 F. 2d 553).

§ 780.136 Hatchery operations.

Hatchery operations incident to the breeding of poultry, whether performed in a rural or urban location, are the "raising of poultry" (Miller Hatcheries v. Boyer, 131 F. 2d 283). The exemption for employees of hatcheries is further discussed in §§ 780.179–780.183.

Practices Exempt Under "Secondary" Meaning of Agriculture Generally

§ 780.137 General statement on "secondary" agriculture.

The discussion in §§ 780.114–780.136 relates to the direct farming operations which come within the "primary" meaning of the definition of "agriculture". As defined in section 3(f) "agriculture" includes not only the distinctively farming activities described in the "primary" meaning but also includes, in its "secondary" meaning, "any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market". The legislative history makes it plain that this language was particularly included to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist farmers in what is recognized as a purely agricultural task and also to assist a farmer in getting his agricultural goods to market in their raw or natural state, should be included within the definition of agricultural employees (see Bowie v. Gonzalez, 117 F. 2d 11; 81 Cong. Rec. 7876, 7888).

§ 780.138 Required relationship of practices to farming operations.

To come within this secondary meaning, a practice must be performed either by a farmer or on a farm. It must also be performed either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed. In addition, the practice must be performed "as an incident to or in conjunction with" the farming operations. No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the "secondary" meaning of "agriculture". Thus, employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of "agriculture". The exemption of industrial operations is not within the intent of section 13(a)(6) and the definition in section 3(f). The exemption of agricultural labor from the operation of the Act is not admissible as an argument to exempt labor in an industry from its operation, nor does it justify exemption of processes that are more akin to manufacturing than to agriculture (see Bowie v. Gonzalez, 117 F. 2d 11; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473).

Practices Performed "by a Farmer"

§ 780.139 Performance "by a farmer" generally.

Among other things, a practice must be performed by a farmer or on a farm in order to come within the secondary portion of the definition of "agriculture". No precise lines can be drawn which will serve to delimit the term "farmer" in all cases. Essentially, however, the term is an occupational title and the employer must be engaged in activities of a type and to the extent that the person ordinarily regarded as a "farmer" is engaged in order to qualify for the title. If this test is met, it is immaterial for what purpose he engages in farming or whether farming is his sole occupation. Thus, an employer's status as a "farmer" is not altered by the fact that his only purpose is to obtain products useful to him in a non-farming enterprise which he conducts. For example, an employer engaged in raising nursery stock is a "farmer" for purposes of section 3(f) even though his purpose is to supply goods for a separate establishment where he engages in the retail distribution of nursery products. The term "farmer" as used in section 3(f) is not confined to individual persons. Thus an association, a partnership, or a corporation which engages in actual farming operations may be a "farmer" (see Mitchell v. Budd, 350 U.S. 473). This is so even where it operates "what might be called the agricultural analogue of the modern industrial assembly line" (Maneja v. Waialua, 349 U.S. 254).

§ 780.140 Operations which constitute one a "farmer".

Generally, an employer must undertake farming operations of such scope and significance as to constitute a distinct activity, for the purpose of yielding a farm product, in order to be regarded as a "farmer". It does not necessarily follow, however, that any employer is a "farmer" simply because he engages in some actual farming operations of the type specified in section 3(f). Thus, one who merely harvests a crop of agricultural commodities is not a "farmer" although his employees who actually do the harvesting are employed in "agriculture" and are exempt in those weeks when exclusively so engaged. As a general rule, a farmer performs his farming operations on land owned, leased, or controlled by him and devoted to his own use. The mere fact, therefore, that an employer harvests a growing crop, even under a partnership agreement pursuant to which he provides credit, advisory or other services, is not generally considered to be sufficient to qualify the employer so engaged as a "farmer". Such an employer would stand, in packing or handling the product, in the same relationship to the produce as if it were from the fields or groves of an independent grower. One who engages merely in practices which are incidental to farming is not a "farmer". For example, a company which merely prepares for market, sells, and ships flowers and plants grown and cultivated on farms by affiliated corporations is not a "farmer". The fact that one has suspended actual farming operations during a period in which he performs only practices incidental to his past or prospective farming operations does not, however, preclude him from qualifying as a "farmer". One otherwise qualified as a farmer does not lose his status as such because he performs farming operations on land which he does not own or control, as in the case of a cattleman using public lands for grazing.

§ 780.141 Operations must be performed "by" a farmer.

"Farmer" includes the employees of a farmer. It does not include an employer merely because he employs a farmer or appoints a farmer as his agent to do the actual work. Thus, the stripping of tobacco, i.e., removing leaves from the stalk, by the employees of an independent warehouse is not a practice performed "by a farmer" even though the warehouse acts as agent for the tobacco farmer or employs the farmer in the stripping operations. One who merely performs services or supplies materials for farmers in return for compensation in money or farm products is not a "farmer". Thus, a person who provides credit and management services to farmers cannot qualify as a "farmer" on that account. Neither can a repairman who repairs and services farm machinery qualify as a "farmer" on that basis. Where crops are grown under contract with a person who provides a market, contributes counsel and advice, makes advances and otherwise assists the grower who actually produces the crop, it is the grower and not the person with whom he contracts who is the farmer with respect to that crop (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

§ 780.142 Farmers' cooperative as a "farmer".

(a) The phrase "by a farmer" covers practices performed either by the farmer himself or by the farmer through his employees. Employees of a farmer's cooperative association, however, are employed not by the individual farmers who compose its membership or who are its stockholders, but by the cooperative association itself. Cooperative associations, whether in the corporate form or not, are distinct, separate entities from the farmers who own or compose them. The work performed by a farmers' cooperative association is not work performed "by a farmer" but for farmers. Therefore, employees of a farmers' cooperative association are not generally engaged in any practices performed "by a farmer" within the meaning of section 3(f) and are not ordinarily exempt (Farmers Reservoir Co. v. McComb, 337 U.S. 755; Goldberg v. Crowley Ridge Ass'n., — F. 2d — (C.A. 8, Oct. 16, 1961, No. 16732); McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, 181 F. 2d 697). The legislative history of the Act supports this interpretation. Statutes usually exempt farmers' cooperative associations in express terms if an exemption is intended. The omission of an express exemption from the Fair Labor Standards Act is significant since many unsuccessful attempts were made on the floor of Congress to secure special treatment for such cooperatives.

(b) It is possible that some farmers' cooperative associations may themselves engage in actual farming operations to an extent and under circumstances sufficient to qualify as a "farmer". In such case, any of their employees who perform practices as an incident to or in conjunction with such farming operations are employed in "agriculture".

PRACTICES PERFORMED "ON A FARM"

§ 780.143 Performance "on a farm" generally.

If a practice is not performed by a farmer, it must, among other things, be performed "on a farm" to come within the secondary meaning of "agriculture" in section 3(f). Any practice which cannot be performed on a farm, such as "delivery to market", is necessarily excluded, therefore, when performed by someone other than farmer (see Farmers Reservoir Co. v. McComb, 337 U.S. 755; Chapman v. Durkin, 214 F. 2d 360, cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied 348 U.S. 897). Thus, employees of an alfalfa dehydrator engaged in hauling chopped or unchopped alfalfa away from the farms to the dehydrating plant are not employed in a practice performed "on a farm".

§ 780.144 Meaning of "farm".

A "farm" is a tract of land devoted to the actual farming activities included in the first part of section 3(f). Thus, the gathering of wild plants in the woods for transplantation in a nursery is not an operation performed "on a farm". (For a further discussion, see § 780.176.) The total area of a tract operated as a unit for farming purposes is included in the "farm", irrespective of the fact that some of this area may not be utilized for actual farming operations (see NLRB v. Olaa Sugar Co., 242 F. 2d 714; In re Princeville Canning Co., 14 WH Cases 641 and 762). It is immaterial whether a farm is situated in the city or in the country. However, a place in a city where no primary farming operations are performed is not a farm even if operated by a farmer (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

§ 780.145 Employment in practices on a farm.

Employees engaged in building terraces or threshing wheat and other grain, employees engaged in the erection of silos and granaries, employees engaged in digging wells or building dams for farm ponds, employees engaged in inspecting and culling flocks of poultry, and pilots and flagmen engaged in the aerial dusting and spraying of crops are examples of the types of employees of independent contractors who may be considered employed in practices performed "on a farm". Even though an employee may work on several farms during a workweek, he is regarded as employed "on a farm" for the entire workweek if his work on each farm pertains solely to farming operations on that farm. The fact that a minor and incidental part of the work of such an employee occurs off the farm will not defeat the exemption. Thus, a small amount of time within the workweek spent in transporting necessary equipment for work to be done on farms will not defeat the exemption. Field employees of a canner or processor of farm products who work on farms during the planting and growing season where they supervise the planting operations and consult with the grower on problems of cultivation are employed in practices performed "on a farm" so long as such work is done entirely on farms save for an incidental amount of reporting to their employer's plant. Other employees of the above employers employed away from the farm would not come within the exemption. For example, airport employees such as mechanics, loaders, and office workers employed by a crop dusting firm would not be exempt (see Tobin v. Wenatchee Air Service, 10 WH Cases 680, (E.D. Wash.)).

"SUCH FARMING OPERATIONS"—OF THE FARMER

§ 780.146 Practices must be performed in connection with farmer's own farming.

"Practices * * * performed by a farmer" must be performed as an incident to or in conjunction with "such farming operations" in order to constitute "agriculture" within the secondary meaning of the term. Practices performed by a farmer in connection with his non-farming operations do not satisfy this requirement (see Calaf v. Gonzalez, 127 F. 2d 934; Mitchell v. Budd, 350 U.S. 473.) Furthermore, practices performed by a farmer can meet the above requirement only in the event that they are performed in connection with the farming operations of the same farmer who performs the practices. Thus, the requirement is not met with respect to employees engaged in any practices performed by their employer in connection with farming operations that are not his own (see Farmers Reservoir Co. v. McComb, 337 U.S. 755; Mitchell v. Hunt, 263 F. 2d 913; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Bowie v. Gonzalez, 117 F. 2d 11.) The processing by a farmer of commodities of other farmers, if incident to or in conjunction with farming operations, is incidental to or in conjunction with the farming operations of the other farmers and not incidental to or in conjunction with the farming operations of the farmer doing the processing (Mitchell v. Huntsville Nurseries, supra; Farmers Reservoir Co. v. McComb, supra; Bowie v. Gonzalez, supra).

§ 780.147 Application of the general principles.

Some examples will serve to illustrate the above principles. Employees of a fruit grower who dry or pack fruit not grown by their employer are not exempt. Storage operations conducted by a farmer in connection with products grown by someone other than the farmer are not exempt. Employees of a grower-operator of a sugar cane mill who transport cane from fields to the mill are not exempt where such cane is grown by independent farmers on their land as well as by the mill operator (Bowie v. Gonzalez, 117 F. 2d 11). Employees of a tobacco grower who strip tobacco (i.e. remove the leaves from the stalk) are not exempt when performing this operation on tobacco not grown by their employer. On the other hand, where a farmer rents some space in a warehouse or packing house located off the farm and the farmer's own employees there

engage in handling or packing only his own products for market, such operations by the farmer are exempt if performed as an incident to or in conjunction with his farming operations. Such arrangements are distinguished from those where the employees are not actually employed by the farmer. The fact that a packing shed is conducted by a family partnership, packing products exclusively grown on lands owned and operated by individuals constituting the partnership, does not alter the status of the packing activity. Thus, if in a particular case an individual farmer is exempt, a family partnership which performs the same operations would also be exempt (Dofflemeyer v. NLRB, 206 F. 2d 813).

§ 780.148 Pea vining.

Vining employees of a pea vinery located on a farm, who vine only the peas grown on that particular farm, are exempt. If they also vine peas grown on other farms, the exemption does not apply unless the farmer-employer owns or operates the other farms and vines his own peas exclusively. However, the work of vining station employees in weeks in which the stations vine only peas grown by a canner on farms owned or leased by him is considered part of the canning operations. As such, the cannery operations, including the vining operations, are exempt only if the canner cans crops which he grows himself and if the canning operations are subordinate to the farming operations.

§ 780.149 Place of performing the practice as a factor.

So long as the farming operations to which a farmer's practice pertains are performed by him in his capacity as a farmer, the exempt status of the practice is not necessarily altered by the fact that the farming operations take place on more than one farm or by the fact that some of the operations are performed off his farm (NLRB v. Olaa Sugar Co., 242 F. 2d 714). Thus, where the practice is performed with respect to products of farming operations, the controlling consideration is whether the products were produced by the farming operations of the farmer who performs the practice rather than at what place or on whose land he produced them. Ordinarily, a practice performed by a farmer in connection with farming operations conducted on land which he owns or leases will be considered as performed in connection with the farming operations of such farmer in the absence of facts indicating that the farming operations are actually those of someone else. Conversely, a contrary conclusion will ordinarily be justified if such farmer is not the owner or a bona fide lessee of such land during the period when the farming operations take place. The question of whose farming operations are actually being conducted in cases where they are performed pursuant to an agreement or arrangement, not amounting to a bona fide lease, between the farmer who performs the practice and the land-owner necessarily involves a careful scrutiny of the facts and circumstances surrounding the arrangement. Where commodities are grown on the farm of the actual grower under contract with another, practices performed by the latter on the commodities, off the farm where they were grown, relate to farming operations of the grower rather than to any farming operations of the contract purchaser. This is true even though the contract purports to lease the land to the latter, give him title to the crop at all times, and confer on him the right to supervise the growing operations, where the facts as a whole show that the contract purchaser provides a farm market, cash advances, and advice and counsel but does not really perform growing operations (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

"SUCH FARMING OPERATIONS"—ON THE FARM

§ 780.150 Practices must relate to farming operations on the particular farm.

"Practices * * * performed * * * on a farm" must be performed as an incident to or in conjunction with "such farming operations" in order to constitute "agriculture" within the secondary meaning of the term. No practice performed with respect to farm commodities is within the language under discusion by reason of its performance on a farm unless all of such commodities are the products of that farm. Thus, the performance on a farm of any practice, such as packing or storing, which may be incidental to farming operations cannot constitute a basis for exempting employees engaged in such practice if the practice is performed upon any commodities that have been produced elsewhere than on such farm (see Mitchell v. Hunt, 263 F. 2d 913). The construction by an independent contractor of a granary on a farm is not connected with "such" farming operations if the farmer for whom it is built intends to use the structure for storing grain produced on other farms. Nor is the requirement met with respect to employees engaged in any other practices performed on a farm, but not by a farmer, in connection with farming operations that are not conducted on that particular farm. The fact that such a practice pertains to farming operations generally or to those performed on a number of farms, rather than to those performed on the same farm only, is sufficient to take it outside the scope of the statutory language. Area soil surveys and genetics research activities, results of which are made available to a number of farmers, are typical of the practices to which this principle applies and which are not exempt under this provision.

§ 780.151 Practices on a farm not related to farming operations.

Practices performed on a farm in connection with nonfarming operations performed on or off such farm do not meet the requirement stated in § 780.150. For example, if a farmer operates a gravel pit on his farm, none of the practices performed in connection with the operation of such gravel pit would be exempt. Whether or not some practices are performed in connection with farming operations conducted on the farm where they are performed must be determined with reference to the purpose of the farmer for whom the practice is performed. Thus, land clearing operations may or may not be connected with such farming operations depending on whether or not the farmer intends to devote the cleared land to farm use.

§ 780.152 Practices on a farm not performed for the farmer.

The fact that a practice performed on a farm is not performed by or for the farmer is a strong indication that it is not performed in connection with the farming operations there conducted. Thus, where such an employer other than the farmer performs certain work on a farm solely for himself in furtherance of his own enterprise, the practice cannot ordinarily be regarded as performed in connection with farming operations conducted on the farm. For example, it is clear that the work of employees of a utility company in trimming and cutting trees for power and communications lines is part of a non-farming enterprise outside the exemption. When a packer of vegetables or dehydrator of alfalfa buys the standing crop from the farmer, harvests it with his own crew of employees, and transports the harvested crop to his off-the-farm packing or dehydrating plant, the transporting and plant employees, who are not engaged in "primary" agriculture as are the harvesting employees (see NLRB v. Olaa Sugar Co., 242 F. 2d 714), are clearly not exempt. Such an employer cannot automatically gain the exemption for the plant employees by merely transferring the operations to the farm so as to meet the "on a farm" requirement. They will continue outside the exemption if the packing or dehydrating is not in reality done for the farmer. The question of for whom the practices are performed is one of fact. In determining the question, however, the fact that prior to the performance of the packing or dehydrating operations, the farmer has relinquished title and divested himself of further responsibility with respect to the product, is highly significant.

PERFORMANCE OF THE PRACTICES "AS AN INCIDENT TO OR IN CONJUNCTION WITH" THE FARMING OPERATIONS

§ 780.153 "As an incident to or in conjunction with" the farming operations.

In order for practices other than actual farming operations to constitute "agriculture" within the meaning of section 3(f) of the Act, it is not enough that they be performed by a farmer or on a farm in connection with the farming operations conducted by such farmer or on such farm, as explained in §§ 780.138–780.152. They must also be performed "as an incident to or in conjunction with" these farming operations. The line between practices that are and those that are not performed "as an incident to or in conjunction with" such farming operations is not susceptible of precise definition. Generally, a practice performed in connection with farm-

ing operations is within the statutory language only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business. Industrial operations (Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398) and processes that are more akin to manufacturing than to agriculture (Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473) are not included. This is also true when on-the-farm practices are performed for a farmer. As to when practices may be regarded as performed for a farmer, see § 780.152.

§ 780.154 The relationship is determined by consideration of all relevant factors.

The character of a practice as a part of the agricultural activity or as a distinct business activity must be determined by examination and evaluation of all the relevant facts and circumstances in the light of the pertinent language and intent of the Act. The result will not depend on any mechanical application of isolated factors or tests. Rather, the total situation will control (Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473). Due weight should be given to any available criteria which may indicate whether performance of such a practice may properly be considered an incident to farming within the intent of the Act. Thus, any mention or lack of mention of the particular practice in related provisions of the Act (see § 780.155), the general relationship, if any, of the practice to farming as evidenced by common understanding, competitive factors, and the prevalence of its performance by farmers (see § 780.156), and similar pertinent matters should be considered. Other factors to be considered in determining whether a practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. With respect to practices performed on farm products (see § 780.157) and in the consideration of any specific practices (see § 780.158–780.183), there may be special factors in addition to those above mentioned which may aid in the determination.

§ 780.155 Importance of related exemptions.

As indicated in § 780.9 of Subpart A of this Part 780, the exemptions in the Act which relate to agriculture and its products should be construed together to form a consistent whole. In determining whether a given practice should be considered to be performed as an incident to or in conjunction with farming operations within the secondary meaning intended to be given to "agriculture" under the definition in section 3(f) of the Act, it is important to consider any mention or omission of the practice in the related exemption provisions of the Act. For example, a practice for which an exemption from the overtime provisions only is specifically provided in another section of the Act would not appear to be one which Congress intended to include in "agriculture" for which a complete exemption from minimum wages and overtime is provided (see Bowie v. Gonzalez, 117 F. 2d 11). The Supreme Court has considered the treatment of the practice under section 13(a)(10) of the Act especially significant as an indication of the intent to include or exclude it under the exemption for agriculture. The section 13(a)(10) exemption for specified operations performed within the "area of production" on agricultural or horticultural commodities for market was intended, as shown by the legislative history cited by the Court, to equalize the cost position of the small farmer who does not have his own facilities to prepare the crop for market with that of the large farmer who does have such facilities, by providing a minimum wage and overtime exemption for independent operators of such facilities who provide these services for the small farmers' crops. Accordingly, in the Court's view, the omission of a particular practice from those listed in section 13(a)(10) indicates that it is not within the intended scope of the exemption for agriculture, especially if the practice is expressly mentioned in a narrower exemption. Thus, with respect to the processing of sugar cane, the Court said in Maneja v. Waialua, 349 U.S. 254: "Congress would not have omitted sugar milling from the 'area of production' exemption if it had not concluded that it also fell outside the agricultural exemption."

§ 780.156 Importance of relationship of the practice to farming generally.

As pointed out previously in § 780.105, the exemption provided by sections 3(f) and 13(a)(6) was meant to apply only to agriculture. The inclusion of incidental practices in the definition of agriculture was not intended to exempt typical factory workers or industrial operations, and the sponsors of the exemption made it clear that the erection and operation on a farm by a farmer of a factory, even one using raw materials which he grows, "would not make the manufacturing * * * a farming operation" (see 81 Cong. Rec. 7658; Maneja v. Waialua, 349 U.S. 254). Accordingly, in determining whether a given practice is performed "as an incident to or in conjunction with" farming operations under the intended meaning of section 3(f), the nature of the practice and the circumstances under which it is performed must be considered in the light of the common understanding of what is agricultural and what is not, of the facts indicating whether performance of the practice is in competition with agricultural or with industrial operations, and of the extent to which such a practice is ordinarily performed by farmers incidentally to their farming operations (see Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Vives v. Serralles, 145 F. 2d 552; Mitchell v. Hunt, 263 F. 2d 913; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; Mitchell v. Budd, 350 U.S. 473; Maneja v. Waialua, supra). Such an inquiry would appear to have a direct bearing on whether a practice is an "established" part of agriculture. The fact that farmers raising a commodity on which a given practice is performed do not ordinarily perform such a practice has been considered a significant indication that the practice is not "agriculture" within the secondary meaning of section 3(f) (Mitchell v. Budd, supra; Maneja v. Waialua, supra). The test to be applied is not the proportion of those performing the practice who produce the commodities on which it is performed but the proportion of those producing such commodities who perform the practice (Maneja v. Waialua, supra). In Mitchell v. Budd, supra, the United States Supreme Court found that the following two factors tipped the scales so as to take the employees of tobacco bulking plants outside the scope of the agriculture exemption: Tobacco farmers do not ordinarily perform the bulking operation; and, the bulking operation is a process which changes tobacco leaf in many ways and turns it into an industrial product.

§ 780.157 Practices performed on farm products—special factors considered.

In determining whether a practice performed on agricultural or horticultural commodities is incident to or in conjunction with the farming operations of a farmer or a farm, it is also necessary to consider the type of product resulting from the practice—as whether the raw or natural state of the commodity has been changed. Such a change may be a strong indication that the practice is not within the exemption (Mitchell v. Budd, 350 U.S. 473); the view was expressed in the legislative debates on the Act that it marks the dividing line between processing as an agricultural function and processing as a manufacturing operation (Maneja v. Waialua, 349 U.S. 254, citing 81 Cong. Rec. 7659–7660, 7877–7879). Consideration should also be given to the value added to the product as a result of the practice and whether a sales organization is maintained for the disposal of the product. Seasonality of the operations involved in the practice would not be very helpful as a test to distinguish between operations incident to agriculture and operations of commercial or industrial processors who handle a similar volume of the same seasonal crop. But the length of the period during which the practice is performed might cast some light on whether the operations are conducted as a part of agriculture or as a separate undertaking when considered together with the amount of investment, payroll, and other factors. In some cases, the fact that products resulting from the practice are sold under the

producer's own label rather than under that of the purchaser may furnish an indication that the practice is conducted as a separate business activity rather than as a part of agriculture.

PRACTICES INCLUDED WHEN PERFORMED AS PROVIDED IN SECTION 3(f)

§ 780.158 "Any" practices meeting the requirements will qualify for exemption.

The language of section 3(f) of the Act, in defining the "secondary" meaning of "agriculture", provides that any practices performed by a farmer or on a farm as an incident to or in conjunction with such (his or its) farming operations are within the definition. The practices which may be exempt as "agriculture" if so performed are stated to include forestry or lumbering operations, preparation for market, and delivery to storage or to market or to carriers for transportation to market. The specification of these practices is illustrative rather than limiting in nature. The broad language of the definition clearly includes all practices thus performed and not merely those named (see Maneja v. Waialua, 349, U.S. 254).

§ 780.159 Named practices as well as others must meet the requirements.

The specific practices named in section 3(f) must, like any others, be performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, for this condition applies to "any" practices brought within the secondary meaning of agriculture as defined in that section of the Act. Thus, the preparation for market, by a farmer's employees on a farm of animals to be sold at a livestock auction is not exempt if animals from other farmers and other farms are also handled. The practice is not performed as an incident to or in conjunction with "such" farming operations, that is, the operations of the farmer by whom, or of the farm on which, the livestock is raised (Mitchell v. Hunt, 263 F. 2d 913).

"FORESTRY OR LUMBERING OPERATIONS"

§ 780.160 Exemption of forestry or lumbering operations is limited.

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed "by a farmer or on a farm as an incident to or in conjunction with such farming operations". While "agriculture" is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not within the agricultural exemption.

§ 780.161 Meaning of "forestry or lumbering operations".

The term "forestry or lumbering operations" refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.174–780.178, and in Part 788 of this chapter which considers the section 13(a)(15) exemption for forestry or logging operations in which not more than 12 employees are employed.) "Wood working" as such is not included in "forestry" or "lumbering" operations. The manufacture of charcoal under modern methods is neither a "forestry" nor "lumbering" operation and cannot be regarded as "agriculture".

§ 780.162 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed "in conjunction with" as well as "incident to" farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural if the person performing the practice did any farming, no matter how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (Ridgeway v. Warren, 60 F. Supp. 363 (M.D. Tenn.); In re Combs, 5 WH Cases 595, 10 Labor Cases 62,802 (M. D. Ga.)). To illustrate, where an employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous to such timberland, he would not be entitled to the benefit of the exemption so far as his forestry or lumbering operations are concerned. In such case, the forestry or lumbering operations would clearly not be subordinate to the farming operations but rather the principal or a separate business of the "farmer".

§ 780.163 Performance of operations on a farm but not by the farmer.

Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner are not within the exemption, unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to "such farming operations".

§ 780.164 Number of employees engaged in operations not material.

The fact that the employer employs fewer than a certain number of employees in forestry and lumbering operations does not provide a basis for their exemption as agricultural employees. This exemption is thus to be distinguished from the exemption provided by section 13(a)(15) (discussed in Part 788 of this chapter) which is limited to employers employing not more than 12 employees in the forestry or logging operations described therein.

"PREPARATION FOR MARKET"

§ 780.165 Scope and limits of exemption for "preparation for market".

"Preparation for market" is also named as one of the practices which may be included in "agriculture". The term includes the operations normally performed upon farm commodities to prepare them for the farmer's market. The farmer's market normally means the wholesaler, processor, or distributing agency to which the farmer delivers his products. "Preparation for market" clearly has reference to activities which precede "delivery to market". It is not, however, synonymous with "preparation for sale". The term must be treated differently with respect to various commodities. It is emphasized that "preparation for market", like other practices, must be performed "by a farmer or on a farm as an incident to or in conjunction with such farming operations" in order to be exempt.

§ 780.166 Particular operations on commodities.

Subject to the rules heretofore discussed, the following activities are, among others, activities that may be performed in the "preparation for market" of the indicated commodities and may come within the exemption:

(a) *Grain, seed, and forage crops.* Weighing, binning, stacking, drying, cleaning, grading, shelling, sorting, packing and storing.

(b) *Fruits and vegetables.* Assembling, ripening, cleaning, grading, sorting, drying, preserving, packing, and storing. (See In the Matter of J. J. Crosetti, 29 LRRM 1353, 98 NLRB 268; In the Matter of Imperial Garden Growers, 91 NLRB 1034, 26 LRRM 1632; Lenroot v. Hazelhurst Mercantile Co., 59 F. Supp. 595; North Whittier Heights Citrus Ass'n. v. NLRB, 109 F. 2d 76; Dofflemeyer v. NLRB, 206 F. 2d 813.)

(c) *Peanuts and nuts (pecans, walnuts, etc.).* Grading, cracking, shelling, cleaning, sorting, packing, and storing.

(d) *Eggs.* Handling, cooling, grading, candling, and packing.

(e) *Wool.* Grading and packing.

(f) *Dairy products.* Separating, cooling, packing, and storing.

(g) *Cotton.* Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

(h) *Nursery stock.* Handling, sorting, grading, trimming, bundling, storing, wrapping, and packaging. (See Jordan v. Stark Brothers Nurseries, 45 F. Supp. 769; Mitchell v. Huntsville Nurseries, 267 F. 2d 286.)

(i) *Tobacco.* Handling, grading, drying, stripping from stalk, tying, sorting, storing, and loading.

(j) *Livestock.* Handling and loading.

(k) *Poultry.* Culling, grading, cooping, and loading.

(l) *Honey.* Assembling, extracting, heating, ripening, straining, cleaning, grading, weighing, blending, packing, and storing.

(m) *Fur.* Removing the pelt, scraping, drying, putting on boards, and packing.

SPECIFIED DELIVERY OPERATIONS

§ 780.167 Application of exemption to specified delivery operations generally.

Exempt employment in "secondary" agriculture, under sections 3(f) and 13(a)(6), includes employment in "delivery to storage or to market or to carriers for transportation to market" when performed by a farmer as an incident to or in conjunction with his own farming operations. To the extent that such deliveries may be accomplished without leaving the farm where the commodities delivered are grown, the exemption extends also to employees of someone other than the farmer who raised them if they are performing such deliveries for the farmer. However, normally such deliveries require travel off the farm, and where this is the case, only employees of a farmer engaged in making them can come within the exemption. Such employees would not be exempt in any workweek when they delivered commodities of other farmers, however, because such deliveries would not be performed as an incident to or in conjunction with "such" farming operations, as explained previously. If the "delivery" trip is an exempt practice, the necessary return trip to the farm is also exempt as a part of it.

§ 780.168 Delivery "to storage".

The term "delivery to storage" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to the places where they are to be stored or held pending preparation for or delivery to market. The fact that the commodities have been subjected to some other practice "by a farmer or on a farm as an incident to or in conjunction with such farming operations" does not preclude application of the exemption to "delivery to storage". The same is true with respect to "delivery to market" and "delivery to carriers for transportation to market".

§ 780.169 Delivery "to market".

The term "delivery * * * to market" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market. It ordinarily refers to the initial journey of the farmer's products from the farm to the market. The market referred to is the farmer's market which normally means the distributing agency, cooperative marketing agency, wholesaler or processor to which the farmer delivers his products. Delivery to market ends with the delivery of the commodities at the receiving platform of such a farmer's market (Mitchell v. Budd, 350 U.S. 473). When the delivery involves travel off the farm (which would normally be the case) the delivery must be performed by the employees employed by the farmer in order to constitute an exempt practice. Delivery by an independent contractor for the farmer or a group of farmers or by a "bird-dog" operator who has purchased the commodities on the farm from the farmer is not an exempt agricultural practice (see Chapman v. Durkin, 214 F. 2d 360, cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied 348 U.S. 897). However, in the case of fruits or vegetables, the Act provides a special exemption for intrastate transportation of the freshly harvested commodities from the farm to a place of first marketing or first processing, which may apply to employees engaged in such transportation regardless of whether they are employed by the farmer. See Subpart E of this Part 780, discussing the exemption provided by section 13(a)(22).

§ 780.170 Delivery "to carriers for transportation to market".

The term "delivery * * * to carriers for transportation to market" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, and poultry to any carrier (including carriers by truck, rail, water, etc.) for transportation by such carrier to market. The market referred to is the farmer's market which normally means the distributing agency, cooperative marketing agency, wholesaler, or processor to which the farmer delivers his products. As in the case of "delivery to market", when it involves travel off the farm (as would normally be the case) the delivery must be performed by the farmer's own employees in order to constitute an exempt practice. Employees of the carrier who transport to market the commodities which are delivered to it are not within the exemption.

EXEMPTION OF TRANSPORTATION OPERATIONS NOT MENTIONED IN SECTION 3(f)

§ 780.171 Transportation of farm products from the fields or farm.

Transportation of farm products from the fields where they are grown or from the farm to other places may be exempt within the "secondary" meaning of agriculture, regardless of whether the transportation is included as "delivery to storage or to market or to carriers for transportation to market", provided only that it is performed by a farmer or on a farm as an incident to or in conjunction with the farming operations of that farmer or that farm. Of course, any transportation operations which are part of, and not subsequent to, the "primary" farming operations are also within the exemption. These principles have been recognized by the courts in the following cases, among others: Maneja v. Waialua, 349 U.S. 254; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Vives v. Serralles, 145 F. 2d 552; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398. If not performed by the farmer, transportation beyond the limits of the farm is not exempt, even when performed by a purchaser of the unharvested commodities who has harvested the crop. The exemption available for his harvesting employees does not extend to the employees transporting the commodities off the farm (Chapman v. Durkin, 214 F. 2d 360, cert. denied, 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied, 348 U.S. 897).

§ 780.172 Other transportation incident to farming.

(a) Transportation by a farmer or on a farm as an incident to or in conjunction with the farming operations of the farmer or of that farm is within the exemption for agriculture even though things other than farm commodities raised by the farmer or on the farm are being transported. As previously indicated, transportation of commodities raised by other farmers or on other farms would defeat the exemption. The exemption clearly covers the transportation by the farmer, as an incident to or in conjunction with his farming activities, of farm implements, supplies, and field workers to and from the fields, regardless of whether such transportation involves travel on or off the farm and regardless of the method used. The Supreme Court of the United States so held in Maneja v. Waialua, 349 U.S. 254. Transportation of field workers to or from the farm by persons other than the farmer does not come within the exemption. However, under section 13(a)(22) of the Act, discussed in Subpart E of this Part 780, an exemption is provided for transportation, whether or not performed by the farmer, of fruit or vegetable harvest workers to and from the farm, within the same State where the farm is located. In the case of transportation to the farm of materials or supplies, it seems clear that transportation to the farm by the farmer of materials and supplies for use in his farming operations, such as seed, animal or poultry feed, farm machinery or equipment, etc., would be incidental to the farmer's actual farming operations. Thus, truck drivers employed by a farmer to haul feed to the farm for feeding pigs are engaged in "agriculture."

(b) With respect to the practice of transporting farm products from farms to a processing establishment by employees of a person who owns both the farms and the establishment, such practice may or may not be incident to or in conjunction with the employer's farming operations depending on all the pertinent facts. For example, the transportation is clearly incidental to milling operations, rather than to farming, where the employees engaged in it are hired by the mill, carried on its payroll, do no agricultural work on the farms, and report for and end their daily duties at the mill where the transportation vehicles are kept (Calaf v. Gonzales, 127 F. 2d 934). On the other hand, a different result is reached where the facts show that the transportation workers are farm employees whose work is closely integrated with harvesting and other direct farming operations (NLRB v. Olaa Sugar Co., 242 F. 2d 714; and see Vives v. Serralles, 145 F. 2d 552). The method by which the transportation is accomplished is not material (Maneja v. Waialua, 349 U.S. 254).

OTHER UNLISTED PRACTICES WHICH MAY BE EXEMPT

§ 780.173 Examples of practices exempt if requirements of section 3(f) are met.

(a) As has been noted above, the term "agriculture" includes other practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations conducted by such farmer or on such farm in addition to the practices listed in section 3(f). The selling (including selling at roadside stands or by mail order and house to house selling) by a farmer and his employees of his agricultural commodities, dairy products, etc., is such a practice provided it does not amount to a separate business. Other such practices are office work and maintenance and protective work. The exemption applies, for example, to secretaries, clerks, bookkeepers, night watchmen, maintenance workers, engineers, and others who are employed by a farmer or on a farm if their work is part of the agricultural activity and is subordinate to the farming operations of such farmer or on such farm. (Damutz v. Pinchbeck, 66 F. Supp. 667, aff'd. 158 F. (2d) 882). Employees of a farmer who repair the mechanical implements used in farming, as a subordinate and necessary task incident to their employer's farming operations, are within the exemption. It makes no difference that the work is done by a separate labor force in a repair shop maintained for the purpose, where the size of the farming operations is such as to justify it. Only employees engaged in the repair of equipment used in performing agricultural functions would be exempt, however; employees repairing equipment used by the employer in industrial or other nonfarming activities would have to qualify under other exemptions if they are to be exempt (Maneja v. Waialua, 349 U.S. 254). The repair of equipment used by other farmers in their farming operations would not qualify for exemption as a practice incident to the farming operations of the farmer employing the repair workers.

(b) The following are other examples of practices which may qualify as "agriculture" under the secondary meaning in section 3(f), when done on a farm, whether done by a farmer or by a contractor for the farmer, so long as they do not relate to farming operations on any other farms: The operation of a cook camp for the sole purpose of feeding persons engaged exclusively in agriculture on that farm; artificial insemination of the farm animals; custom corn shelling and grinding of feed for the farmer; the packing of apples by portable packing machines which are moved from farm to farm packing only apples grown on the particular farm where the packing is being performed; the culling, catching, cooping, and loading of poultry; the threshing of wheat; the shearing of sheep; the gathering and baling of straw.

(c) It must be emphasized with respect to all practices performed on products, for which exemption is claimed that they must be performed only on the products produced or raised by the particular farmer or on the particular farm (Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Hunt, 263 F. 2d 913; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Farmers Reservoir Co. v. McComb, 337 U.S. 755; Walling v. Peacock Corp., 58 F. Supp. 880; Lenroot v. Hazelhurst Mercantile Co., 153 F. 2d 153; Jordan v. Stark Bros. Nurseries, 45 F. Supp. 769). If exempt at all, practices on farm products which fail to qualify under section 13(a)(6) must qualify under section 13(a)(10) or other exemptions for certain operations and practices on farm commodities.

APPLICATION OF SECTIONS 3(f) AND 13(a)(6) TO NURSERIES AND LANDSCAPING

§ 780.174 Exempt nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in "agriculture":

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable and ornamental plants or trees (but not Christmas trees), and shrubs, vines and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

§ 780.175 Exempt and nonexempt planting; lawn mowing.

(a) The planting of trees and bushes is exempt where it constitutes a step in the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, or where it constitutes a practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations (as where it is part of the subordinate marketing operations of the grower of such trees or bushes). Thus, employees of the nurseryman who raised such nursery stock are doing exempt work when they plant the stock on private or public property, trim, spray, brace and treat the planted stock, or perform other duties incidental to its care and preservation. Similarly, employees who plant fruit trees and berry stock not raised by their employer would qualify for exemption if the planting is done on a farm as an incident to or in conjunction with the farming operation on that farm.

(b) On the other hand, the planting of trees and bushes on residential, business or public property is not exempt when it is done by employees of an employer who has not grown the trees and bushes, or who, if he has grown them, engages in the planting operations as an incident, not to his farming operations, but to landscaping operations which include principally the laying of sod and the construction of pools, walks, drives, and the like.

(c) The mowing of lawns, except where it can be considered incidental to farming operations, is not exempt work.

§ 780.176 Operations with respect to wild plants.

Nurseries frequently obtain plants growing wild in the woods or fields which are to be further cultivated by the nursery before they are sold by it. Obtaining such plants is a practice which is incidental to farming operations. It is therefore exempt if performed by a farmer or on a farm. Thus, if performed by employees of the nursery, it is exempt. On the other hand, if performed off the farm by employees of an independent contractor, it is not exempt. The transplanting of such wild plants in the nursery is performed "on a farm" and is exempt whether performed by employees of an independent contractor or by employees of the nursery.

§ 780.177 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.160.)

§ 780.178 Packing, storage, warehousing, and sale of nursery products.

Employees of a grower of nursery stock who work in packing and storage sheds sorting the stock, grading and trimming it, racking it in bins, and packing it for shipment are employed in "agriculture" provided they handle only products grown by their employer and their activities constitute an established part of their employer's agricultural activities and are subordinate to his farming operations. Such employees are not employed in agriculture when they handle the products of other growers (Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Jordan v. Stark Bros. Nurseries & Orchards Co., 45 F. Supp. 769). The exemption would typically apply to employees engaged in the balling and storing of shrubs and trees grown in the nursery. Where a grower of nursery stock operates, as a separate enterprise, a processing establishment or an establishment for the wholesale or retail distribution of such commodities, the employees in such separate enterprise are not exempt (see Walling v. Rocklin, 132 F. 2d 3; Mitchell v. Huntsville Nurseries, 267 F. 2d 286). Although the handling and the sale of nursery commodities by the grower at or near the place where they were grown may be incidental to his farming operations, the character of these operations changes when they are performed in an establishment set up as a marketing point to aid in the distribution of those products.

APPLICATION OF SECTIONS 3(f) AND 13(a)(6) TO HATCHERIES

§ 780.179 The typical hatchery operations constitutes "agriculture".

As stated in § 780.136, the typical hatchery is engaged in "agriculture", whether in a rural or city location. Where the hatchery is engaged solely in procuring eggs for hatching, performing the hatching operations and selling the chicks, all the employees including office and maintenance workers are exempt (see Miller Hatcheries v. Boyer, 131 F. 2d 283).

§ 780.180 Contract production of hatching eggs.

It is common practice for hatcherymen to enter into arrangements with farmer poultry raisers for the production of hatching eggs which the hatchery agrees to buy. Ordinarily, the farmer furnishes the facilities, feed and labor and the hatchery furnishes the basic stock of poultry. The farmer undertakes a specialized program of care and improvement of the flock in cooperation with the hatchery. The hatchery may at times have a surplus of eggs, including those suitable for hatching and cluded eggs, which it sells. Activities such as grading and packing performed by the hatchery employees in connection with the disposal of these eggs, are an incident to the breeding of poultry by the hatchery and are exempt.

§ 780.181 Hatchery employees working on farms.

The work of hatchery employees in connection with the maintenance of the quality of the poultry flock on farms is also part of the "raising" operations. This includes testing for disease, culling, weighing, cooping, loading, and transporting the culled birds. The catching and loading of broilers on farms by hatchery employees for transportation to market are exempt operations.

§ 780.182 Produce business.

In some instances, hatcheries also engage in the produce business as such and commingle with the culled eggs and chickens other eggs and chickens which they buy for resale. Employees are not exempt in any workweek in which their work relates to both the hatchery and produce types of activities.

§ 780.183 Feed sales and other nonexempt activities.

In some situations, the hatchery also operates a feed store and furnishes feed to the growers. As in the case of the produce business operated by a hatchery, this is not an exempt activity and employees engaged therein, such as truck drivers hauling feed to growers, are not exempt. Office workers and other employees lose the exemption in any workweek in which their duties relate to both exempt and nonexempt activities.

THE SECTION 13(a)(6) IRRIGATION EXEMPTION

§ 780.184 Exemption of employees employed in specified irrigation activities.

In addition to exempting employees employed in agriculture, section 13(a)(6) also exempts from the wage and hour provisions of the Act "any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes".

§ 780.185 Exemption is direct and does not mean activities are agriculture.

The exemption provided in section 13(a)(6) for irrigation activities is a direct exemption which depends for its application on its own terms and not on the meaning of "agriculture" as defined in section 3(f). This exemption was added by an amendment to section 13(a)(6) in 1949 to alter the effect of the decision of the United States Supreme Court in Farmers Reservoir Co. v. McComb, 337 U.S. 755, so as to exclude the type of employees involved in that case from certain requirements of the Act. Congress chose to accomplish this result, not by expanding the definition of agriculture in section 3(f), but by adding a further exemption. In view of this approach, it can well be said that Congress agreed with the Supreme Court's holding that such workers are not employed in agriculture, but nevertheless wished to exclude them from the minimum wage and overtime requirements of the Act (Goldberg v. Crowley Ridge Ass'n., — F. 2d — (C.A. 8, Oct. 16, 1961, No. 16732)). Irrigation workers who are employed in any workweek exclusively by a farmer or on a farm in irrigation work which meets the requirement of performance as an incident to or in conjunction with the primary farming operations of such farmer or such farm, as previously explained, are exempt as employed in agriculture under sections 3(f) and 13(a)(6). Where they are not so employed, they are not exempt as agricultural employees (Farmers Reservoir Co. v. McComb, supra), but are exempt only if their duties and the irrigation system on which they work come within the express language of section 13(a)(6) which refers to irrigation work. Where this is the case, it is not material whether or not any of the requirements for exemption of employees employed in agriculture, as previously discussed in this part, are met.

§ 780.186 Exemption is from minimum wages and overtime only.

It should be noted at the outset that this exemption applies only to the minimum wage and overtime provisions of the Act and does not affect the child labor, recordkeeping and other requirements of the Act.

§ 780.187 System must be nonprofit or operated on a share-crop basis.

The exemption does not apply to employees employed in the described operations on facilities of any irrigation system unless the ditches, canals, reservoirs, or waterways in connection with which their work is done meet the statutory requirement that they either be not owned or operated for profit, or be operated on a share-crop basis. The employer is paid on a share-crop basis when he receives, as his total compensation, a share of the crop of the farmers serviced.

§ 780.188 Facilities of system must be used exclusively for agricultural purposes.

Section 13(a)(6) requires for exemption of irrigation work that the ditches, canals, reservoirs, or waterways in connection with which the employee's work is done be "used exclusively for supply and storing of water for agricultural purposes". If a water supplier supplies water for other than "agricultural purposes", the exemption would not apply. For example, the exemption would not apply where a portion of its water is delivered by the supplier to a municipality to be used for general, domestic and commercial purposes. The fact that a small amount of the water furnished for use in his farming operations is in fact used for incidental domestic purposes by the farmer on the farm does not, however, require the conclusion that the water supplied was not exclusively "for agricultural purposes" within the meaning of the irrigation exemption in section 13(a)(6). Accordingly, if otherwise applicable, the exemption is not defeated merely because the water stored and supplied through the ditches, canals, reservoirs, or waterways of the irrigation system includes a small amount which is used for domestic purposes on the farms to which it is supplied. On the other hand, if the water supplier should maintain separate facilities for storing and supplying water for domestic use, it is clear that employees employed in connection with the maintenance or operation of such facilities would not be employed in activities to which the exemption applies. Water used for watering livestock raised by a farmer is "for agricultural purposes".

§ 780.189 Employment "in connection with the operation or maintenance" is exempt.

The irrigation exemption provided by section 13(a)(6) applies to "any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways" of an irrigation system which qualifies for the exemption. The employee, to be exempt, must be employed "in connection with the operation or maintenance" of the named facilities; other employees of the irrigation system, not employed in connection with the named activities, are not exempt. The exemption may apply to employees engaged in insect, rodent, and weed control along the canals and waterways of the irrigation system.

Subpart C—Employment in Agriculture and Livestock Auction Operations Under the Section 13(a)(16) Exemption

INTRODUCTORY

§ 780.200 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart C together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(16) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for certain employees who, in the same workweek, are employed by a farmer in agriculture and also in the farmer's livestock auction operations. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor

and the Administrator in the performance of their duties under the Act. The general exemption provided in section 13(a)(6) of the Act for employees employed in agriculture is not discussed in this subpart except in its relation to section 13(a)(16). The meaning and application of the section 13(a)(6) exemption is fully considered in Subpart B of this Part 780.

§ 780.201 Statutory provision.

Section 13(a)(16) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 and from the overtime provisions of section 7:

any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1).

§ 780.202 General explanatory statement.

Ordinarily, as discussed in Subpart B of this Part 780, an employee who in the same workweek engages in work which is exempt as agriculture under sections 13(a)(6) and 3(f) of the Act and also performs nonexempt work to which the Act applies is not exempt in that week. Employees of a farmer are not employed in work exempt as "agriculture" while engaged in livestock auction operations in which the livestock offered at auction includes livestock raised by other farmers (Mitchell v. Hunt, 263 F. 2d 913). However, under section 13(a)(16) an employee who is employed by a farmer in agriculture as well as in livestock auction operations in the same workweek will not lose the minimum wage exemption for those hours spent exclusively in agriculture, nor the overtime exemption for that workweek, if certain conditions are met. These conditions and their meaning and application are discussed in this subpart.

Requirements for Exemption

§ 780.203 What determines application of exemption.

The application of the section 13(a)(16) exemption depends largely upon the nature of the work performed by the individual employee for whom exemption is sought. The character of the employer's business also determines the application of the exemption. Whether an employee is exempt therefore depends upon his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt in some weeks and others may not.

§ 780.204 General requirements.

The general requirements for exemption under section 13(a)(16) are as follows:

(a) Employment of the employee "primarily" in agriculture in the particular workweek.

(b) This primary employment by a farmer.

(c) Engagement by the farmer in raising livestock.

(d) Engagement by the farmer in livestock auction operations "as an adjunct to" the raising of livestock.

(e) Payment of the minimum wage for all hours spent in livestock auction work by the employee.

These requirements will be separately discussed in the following sections of this subpart.

§ 780.205 Employment in agriculture.

One requirement for exemption is that the employee be employed in "agriculture". "Agriculture", as used in the Act, is defined in section 3(f) as follows:

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

An employee meets the tests of being employed in agriculture when he either engages in any one or more of the branches of farming listed in the first part of the above definition or performs, as an employee of a farmer or on a farm, practices incident to such farming operations as mentioned in the second part of the definition (Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755). The exemption applies to "any employee" of a farmer whose employment meets the tests for exemption. Accordingly, any employee of the farmer who is employed in "agriculture", including laborers, clerical, maintenance and custodial employees, harvesters, dairy workers and others may qualify for the exemption under section 13(a)(16) if the other conditions of the exemption are met.

§ 780.206 Interpretation of term "agriculture".

Section 3(f) of the Act, which defines "agriculture", has been extensively interpreted by the Department of Labor and the courts. Subpart B of this Part 780 contains those interpretations which have full application in construing the term "agriculture" as used in the 13(a)(16) exemption.

§ 780.207 "Primarily employed" in agriculture.

Not only must the employee be employed in agriculture, but he must be "primarily" so employed during the particular workweek or weeks in which the 13(a)(16) exemption is to be applied. The word "primarily" may be considered to mean chiefly or principally. (Agnew v. Board of Governors, 153 F. 2d 785.) This interpretation is consistent with the view, expressed by the sponsor of the exemption at the time of its adoption on the floor of the Senate (107 Cong. Rec. (daily ed., April 19, 1961) p. 5879), that the word means "most of his time." The Department of Labor will consider that an employee who spends more than one-half of his hours worked in the particular workweek in agriculture, as defined in the Act, is "primarily" employed in agriculture during that week.

§ 780.208 "During his workweek".

Section 13(a)(16) specifically requires that the unit of time to be used in determining whether an employe is primarily employed in agriculture is "during his workweek". The employee's own workweek, and not that of any other person, is to be used in applying the exemption. The employee's employment must meet the "primarily" test in each workweek in which the exemption is applied to him.

§ 780.209 Workweek unit in applying the exemption.

The unit of time to be used in determining the application of the exemption to an employee is the workweek. (See Overnight Transportation Co. v. Missel, 316 U.S. 572.) A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.210 Workweek exclusively in exempt work.

An employee who engages exclusively in a workweek in duties which come within the exemption under section 13(a)(16) and is paid in accordance with the requirements of that exemption, is exempt in that workweek from the minimum wage and overtime requirements of the Act.

§ 780.211 Workweek exclusively in agriculture.

In any workweek in which the employee works exclusively in agriculture, performing no duty in respect to livestock auction operations, his exemption for that week is determined by application of section 13(a)(6) to his activities. (See Subpart B of this part.)

§ 780.212 Employment by a "farmer".

A further requirement for exemption is the expressed statutory one that the employee must be employed in agriculture by a "farmer". Employment by a non-farmer will not qualify an employee for the exemption.

§ 780.213 "By such farmer".

The employee's primary employment in agriculture during the exempt week is also required to be by "such farmer". The phrase "such farmer" refers to the particular farmer by whom the employee is employed in agriculture and who engages in the livestock auction operations as an adjunct to his raising of livestock. Even if an employee may spend more than half of his work time in a workweek in agriculture, he would not be exempt if such employment in agri-

culture were engaged in for various persons so that less than the primary portion of his workweek was performed in his employment in agriculture by such farmer. For example, an employee may work a 60 hour week and be employed in agriculture for 50 of those hours, of which 20 hours are worked in his employment by the farmer who is engaged in the livestock auction operations, the other 30 being performed for a neighboring farmer. Although this employee was primarily employed in agriculture during the workweek he is not exempt. His primary employment in agriculture was not by the farmer described in section 13(a)(16) as required.

§ 780.214 Definition of a farmer.

The Act does not define the term "farmer." Whether an employer is a "farmer" within the meaning of section 13(a)(16) must be determined by consideration of the particular facts, keeping in mind the purpose of the exemption. A full discussion of the meaning of the term "farmer" as used in the Act's definition of agriculture is contained in §§ 780.139–780.142 of this part. Generally, as indicated in that discussion, a farmer under the Act is one who engages, as an occupation, in farming operations as a distinct activity for the purpose of producing a farm crop. A corporation of a farmers' cooperative may be a "farmer" if engaged in actual farming of the nature and extent there indicated.

§ 780.215 Raising of livestock.

Livestock auction operations are within the 13(a)(16) exemption only when they are conducted as an adjunct to the raising of livestock by the farmer. The farmer is required to engage in the raising of livestock as a prerequisite for the exemption of an employee employed in the operations described in section 13(a)(16). Engagement by the farmer in one or more of the other branches of farming will not meet this requirement.

§ 780.216 Operations included in raising livestock.

Raising livestock includes such operations as the breeding, fattening, feeding and care of domestic animals ordinarily raised or used on farms. A fuller discussion of the meaning of raising livestock is contained in §§ 780.128–780.131 of this part.

§ 780.217 Adjunct livestock auction operations.

The livestock auction operations referred to in section 13(a)(16) are those engaged in by the farmer "as an adjunct" to the raising of livestock. This phrase limits the relative extent to which the farmer may conduct livestock auctions and claim exemption under section 13(a)(16). To qualify under the exemption provision, the auction operations should be an established part of the farmer's raising of the livestock and subordinate to it. The auction operations should not be conducted on so large a scale as to predominate over the raising of livestock. The livestock auction should be adjunct to the farmer's raising of livestock not only when he engages in it on his own account, but also when he joins with other farmers to hold an auction.

§ 780.218 *"His own account"—"in conjunction with other farmers".*

Under the terms of section 13(a)(16), the farmer may operate a livestock auction solely for his own benefit or he may join with "other farmers" to auction livestock for their mutual benefit. (See § 780.214 with regard to the definition of "farmer".) Unless the auction is conducted by the farmer alone or with others who are "farmers" the exemption does not apply.

§ 780.219 Work "in connection with" livestock auction operations.

An employee whose agricultural employment meets the tests for exemption may engage in "other" employment "in connection with" his employer's livestock auction operations under the conditions stated in section 13(a)(16). The work which an employee may engage in under the phrase "in connection with" includes only those activities which are a necessary incident to conducting a livestock auction of the limited type permitted under the exemption. Such work as transporting the livestock and caring for it, custodial, maintenance, and clerical duties are included. Work which cannot be considered necessarily incident to the livestock auction is not exempt.

§ 780.220 Minimum wage for livestock auction work.

The application of the exemption is further determined by whether another condition has been met. That condition is that the employee, in the workweek in which he engages in livestock auction activities, must be paid at a wage rate not less than the minimum rate required by the Act for the time spent in livestock auction work. The exemption does not apply unless there is payment for all hours spent in livestock auction work at not less than the applicable minimum rate prescribed in the Act.

EFFECT OF EXEMPTION

§ 780.221 No minimum wage for agriculture in exempt week.

In a workweek in which all the requirements for exemption under section 13(a)(16) are met, the employee is exempt from the minimum wage requirements of the Act for all hours worked exclusively in agriculture.

§ 780.222 No overtime wages in exempt week.

In a workweek in which all the requirements of the section 13(a)(16) exemption are met, the employee is exempt from the overtime requirements of section 7 for that entire workweek.

COMBINATIONS OF EXEMPT AND NONEXEMPT WORK

§ 780.223 Engagement in exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt under section 13(a)(16) and also engages in other work to which the Act applies and which is not exempt under this or any other section of the Act, he is not exempt for that week. (See Mitchell v. Hunt, 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle (D.P.R.), 15 Labor Cases 64,842; Walling v. Peacock Corp. (D. Minn.), 7 Labor Cases 61,945.)

§ 780.224 Work exempt under more than one section of the Act.

Where an employee in a workweek performs some work which is exempt under one section of the Act and other work which is exempt under another section of the Act and does no nonexempt work covered by the Act, the exemptions may be combined. If the scope of such exemptions is not the same, the exemption of lesser scope will be applicable for that workweek. For example, if part of an employee's work is exempt from both the minimum wage and overtime requirements and the remainder is exempt only from the overtime pay provisions, the employee is exempt that week from the overtime pay requirements but not from the minimum wage provisions. A case in point would be an employee employed in agriculture for part of the workweek and in handling the livestock of his employer and other farmers at an auction barn for the remainder of the workweek. If any of the requirements of section 13(a)(16) were not met, a combination of the section 13(a)(6) "agriculture" exemption (from minimum wages and overtime) and the section 7(c) "livestock handling" exemption (from overtime only, limited to 14 workweeks in any calendar year) would exempt the employee for the workweek from the overtime, but not the minimum wage provisions of the Act (see Mitchell v. Hunt, 263 F. 2d 913).

Subpart D—Employment of Agricultural Employees in Processing Shade-Grown Tobacco; Exemption From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(21)

INTRODUCTORY

§ 780.300 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart D together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(21) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for certain agricultural employees engaged in the processing, prior to stemming, of shade-grown tobacco for use as cigar wrapper tobacco. As appears more fully in Subpart A, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemption provided in section 13(a)(6) of the Act for employees employed in agriculture is not discussed in this subpart except in its relation to section 13(a)(21). The meaning and application of the section 13(a)(6) exemption

are fully considered in Subpart B of this Part 780.

§ 780.301 Statutory provision.

Section 13(a)(21) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 of the Act and from the overtime provisions of section 7:

any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.

§ 780.302 Legislative history of exemption.

Section 13(a)(21) was added to the Act by the Fair Labor Standards Amendments of 1961, effective September 3, 1961. The intent of the committee which inserted the provision in the amendments which were reported to the House (see H. Rep. No. 75, 87th Cong., 1st Sess., p. 29) was to exclude from the minimum wage and overtime requirements of the Act "employees engaged prior to the stemming process in processing shade-grown tobacco for use as cigar wrapper tobacco, but only if the employees were employed in the growing and harvesting of such tobacco". The Report also pointed out that "such operations were assumed to be exempt prior to the case of Mitchell v. Budd, 350 U.S. 473 (1956), as a continuation of the agricultural process occurring in the vicinity where the tobacco was grown". The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. In that form, it would have altered the effect of the Supreme Court's decision in the case of Mitchell v. Budd, cited above, by bringing the described employees under the exemption provided for agriculture in section 13(a)(6) of the Act. (H. Rep. No. 75, p. 26, and H. Rep. No. 327, p. 17, 87th Cong., 1st Sess.) The Conference Committee, in changing the provision to provide a separate exemption, made it clear that it was "not intended by the committee of conference to change * * * by the exemption for employees engaged in the named operations on shade-grown tobacco the application of the act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rep. No. 327, supra, p. 18.)

§ 780.303 What determines the application of the exemption.

The application of the section 13(a)(21) exemption depends upon the nature of the work performed by the individual employee for whom exemption is sought and not upon the character of the work of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may therefore be exempt while others may not.

Requirements For Exemption

§ 780.304 Basic conditions of exemption.

Under section 13(a)(21) of the Act all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must work on "shade-grown tobacco".

(b) He must be both an "agricultural employee" and employed as such "in the growing and harvesting" of shade-grown tobacco.

(c) In the workweeks for which exemption is claimed, he must be engaged "in the processing * * * of such tobacco" and this processing must be both "prior to the stemming process" and to prepare the tobacco "for use as cigar wrapper tobacco," in order for the exemption to apply.

These requirements are discussed in the following sections of this subpart.

"Shade-Grown Tobacco"

§ 780.305 Definition of "shade-grown tobacco".

Shade-grown tobacco to which the exemption applies is Connecticut Valley Shade-Grown U.S. Type 61 and Georgia-Florida Shade-Grown U.S. Type 62.

§ 780.306 Dependence of exemption on shade-grown tobacco operations.

The exemption provided by section 13(a)(21) of the Act is limited to the performance of certain operations with respect to the specified commodity, shade-grown tobacco. Work in connection with any other kind of tobacco, or any other commodity, including any other farm product, is not exempt under this section. An employee must be an agricultural employee employed in the growing and harvesting of "shade-grown tobacco" and must also engage in the described processing of "such tobacco" in order that the section 13(a)(21) exemption may apply.

§ 780.307 "Such tobacco".

To be within the exemption, the processing activities with respect to shade-grown tobacco must be performed by an employee who has been employed in growing and harvesting "such tobacco". The term "such tobacco" clearly is limited to the specified type of tobacco named in the section, that is, shade-grown tobacco. While a literal interpretation of the term "such tobacco" might lead to a conclusion that the exemption extends only to the processing of the tobacco which the employee grew or harvested, it appears from the legislative history that the intent was to extend the exemption to the processing of such tobacco which may be viewed "as a continuation of the agricultural process, occurring in the vicinity where the tobacco was grown". (H. Rep. 75, 87th Cong. 1st Sess. p. 26.) Thus, it appears that the term "such tobacco" has reference to the local crop of shade-grown tobacco, raised by other local growers as well as by the processor, and which is being processed as a continuation of the growing and harvesting of such crop in the vicinity.

Agricultural Employees Who May Qualify for Exemption

§ 780.308 Exemption limited to specified agricultural employees.

As indicated in § 780.304, an employee processing shade-grown tobacco qualifies for exemption under section 13(a)(21) only if he is both an "agricultural employee" and employed as such "in the growing and harvesting" of shade-grown tobacco. It should be noted that section 13(a)(21) is an exemption applicable to such an employee while he is engaged in the specified processing operations; his employment in growing and harvesting shade-grown tobacco is not included in this exemption but is a prerequisite to its application. Employment in such growing and harvesting operations would, however, be exempt from the minimum wage and overtime pay provisions as employment in agriculture under section 13(a)(6) in any workweek spent exclusively by the employee in such work.

§ 780.309 Agriculture.

The definition of "agriculture", as contained in section 3(f) of the Act, is discussed in Subpart B of this Part 780. The principles there discussed should be referred to as guides to the meaning of the terms "agricultural employee" and "growing and harvesting" as used in section 13(a)(21).

§ 780.310 "Any agricultural employee".

The section 13(a)(21) exemption applies to "any agricultural employee" who is employed in the specified activities. The term "any agricultural employee" includes not only agricultural employees of the tobacco grower but also such employees of other farmers or independent contractors. "Any agricultural employee" employed in the growing and harvesting of shade-grown tobacco will qualify for exemption if he engages in the specified processing operations. The use of the word "agricultural" before "employee" makes it apparent that separate consideration must be given to whether an employee is an "agricultural employee" and to whether he is employed in the specified "growing and harvesting" within the meaning of the Act.

§ 780.311 Meaning of "agricultural employee".

An "agricultural employee," for purposes of section 13(a)(21), may be defined as an employee employed in activities which are included in the definition of "agriculture" in section 3(f) of the Act (see § 780.103 of this part), and who is employed in these activities with sufficient regularity or continuity to characterize him as a person who engages in them as an occupation. Isolated or sporadic instances of engagement by an employee in activities defined as "agriculture" would not ordinarily establish that he is an "agricultural employee". His engagement in agriculture should be sufficiently substantial to demonstrate some dedication to agricultural work as a means of livelihood.

§ 780.312 "Employed in the growing and harvesting".

Section 13(a)(21) exempts processing operations on shade-grown tobacco only when performed by agricultural employees "employed in the growing and harvesting" of such tobacco. The use of the term "and" in the phrase "growing and harvesting" may be in recognition of the fact that in the raising of shade-grown tobacco the two operations are typically intermingled; however, it is not considered that the word "and" would preclude a determination on the particular facts that an employee is qualified for the exemption if he is employed only in "growing" or only in "harvesting." Employment in work other than growing and harvesting of shade-grown tobacco will not satisfy the requirement that the employee be employed in growing and harvesting, even if such work is on shade-grown tobacco and constitutes "agriculture" as defined in section 3(f) of the Act. For example, delivery of the tobacco by an employee of the farmer to the receiving platform of the bulking plant would be a "delivery to market" included in "agriculture" when performed by the farmer as an incident to or in conjunction with his farming operations (Mitchell v. Budd, 350 U.S. 473), but it would not be part of "growing and harvesting".

§ 780.313 What employment in growing and harvesting is sufficient.

To qualify an agricultural employee for exemption while processing shade-grown tobacco, the employee must be one who may currently be described in the language of the exemption as an "agricultural employee employed in the growing and harvesting of shade-grown tobacco". He must be one of those who "were employed in the growing and harvesting of such tobacco" (H. Rep. No. 75, 87th Cong., 1st Sess., p. 29) and one whose processing work could be viewed as a "continuation of the agricultural process, occurring in the vicinity where the tobacco was grown". (Ibid. p. 26.) This appears to require that such employment be in connection with the crop of shade-grown tobacco which is being processed; it appears to preclude an employee who has had no such employment in the current crop season from qualifying for this exemption even if in some past season he was employed in growing and harvesting such tobacco. Bona fide employment in growing and harvesting shade-grown tobacco would also appear to be necessary. An attempt to qualify an employee for the processing exemption by sending him to the fields for growing or harvesting work for a few hours or days would not establish the bona fide employment in growing and harvesting contemplated by the Act. It would not seem sufficient that an employee has been engaged in growing or harvesting operations only occasionally or casually or incidentally for a small fraction of his work time. (See Walling v. Haden, 153 F. 2d 196.) Employment for a significant period in the current crop season or on some regular recurring basis during this season would appear to be necessary before an agricultural employee could reasonably be described as one "employed in the growing and harvesting of shade-grown tobacco". The determination in a doubtful case will, therefore, require a careful examination and consideration of the particular facts.

§ 780.314 "Growing" and "harvesting".

The general meaning of "growing" and "harvesting" of agricultural commodities is explained in §§ 780.126 and 780.127 of Subpart B of this Part 780, where the meaning of these terms as used in the Act's definition of agriculture is fully discussed. As there indicated, these terms include the actual raising of the crop and the operations customarily performed in connection with the removal of the crops by the farmer from their growing position, but do not extend to operations subsequent to and unconnected with the actual process whereby the agricultural commodities are severed from their attachment to the soil. Thus, while transportation to a concentration point on the farm may be included, "harvesting" never extends to transportation or other operations off the farm. The "growing" of shade-grown tobacco is considered to include such work as preparing the soil, planting, irrigating, fertilizing, and other activities. This type of tobacco requires special cultivation and is grown in fields that are completely enclosed and covered with cheesecloth shade. The leaves of the plant are picked in stages, as they mature. The leaves are taken immediately to a tobacco barn, located on the farm, where they are strung on sticks and dried by heat. Before the drying process is completed, the leaves are allowed to absorb moisture. Then they are dried again. It is not until the end of this drying operation that the leaves are packed in boxes and taken from the farm to a bulking plant for further processing (see Mitchell v. Budd, 350 U.S. 473). Under the general principles stated above, "harvesting" of shade-grown tobacco is considered to include the removal of the tobacco leaves from the plant and moving the tobacco from the field to the drying barn on the farm, together with the performance of other work as a necessary part of such operations. Subsequent operations such as the drying of the tobacco in the barn on the farm and packing of the tobacco for transportation to the bulking plant are not included in "harvesting".

EXEMPT PROCESSING

§ 780.315 Processing requirements of section 13(a)(21).

When it has been determined that an employee is an "agricultural employee employed in the growing and harvesting of shade-grown tobacco", to whom section 13(a)(21) of the Act may apply, it then becomes necessary to ascertain whether he is "engaged in the processing * * * of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco". It is only in workweeks when he is so engaged that section 13(a)(21) will provide an exemption from the minimum wage and overtime provisions of the Act.

§ 780.316 "Prior to the stemming process".

The exemption provided by section 13(a)(21) applies only to employees whose processing operation on shade-grown tobacco are performed "prior to the stemming process". (See H. Rep. No. 75, 87th Cong. 1st Sess. p. 26.) This means that an employee engaged in stemming, the removal of the midrib from the tobacco leaf (McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697), or in any operations on the tobacco which are performed after stemming has begun will not come within the exemption. Stemming and all subsequent operations are nonexempt work.

§ 780.317 "For use as cigar wrapper tobacco".

The phrase "for use as cigar wrapper tobacco" limits the type of end product which may be produced by the exempt operations. As its name indicates, cigar wrapper tobacco is used as a cigar wrapper and is distinguished from other types of tobacco which serve other purposes such as filling, pipe, chewing and other kinds of tobacco. Normally, shade-grown tobacco is used only for cigar wrappers. However, if the tobacco is not being processed by the employer for such specific and limited use, the employee is not engaged in exempt processing operations.

§ 780.318 Exempt processing operations.

The processing operations under section 13(a)(21) include, but are not limited to, "drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling" of the shade-grown tobacco. As previously noted, these operations are exempt only if performed on shade-grown tobacco prior to the stemming process to prepare the tobacco for use as cigar wrapper tobacco. Some operations in the named categories may, as noted in § 780.314, be performed by a tobacco farmer or on a tobacco farm as an incident to or in conjunction with the growing and harvesting operations performed by such farmer or on such farm, in which event the exemption for agriculture under section 13(a)(6) may be applicable to the employees engaged in these operations. (See §§ 780.139–780.157 of this part.) Where they are not so performed by the farmer or on the farm, however, the exemption provided by section 13(a)(21) will apply if all its conditions are met. Bulking and subsequent processing of shade-grown tobacco, which change and improve the leaf in many ways and turn it into an industrial product, are not normally performed by the farmer or on the farm. Such operations have been held to be more akin to manufacturing than to agriculture (Mitchell v. Budd, 350 U.S. 473, at 475, 481, 482).

§ 780.319 General scope of exempt operations.

All operations normally performed in the processing of shade-grown tobacco for use as cigar wrapper tobacco, if performed prior to the stemming process

and for such use, are included in the exemption. As a whole, this processing substantially changes the physical properties and chemical content of the tobacco, improves its color, increases its combustibility, and eliminates the rawness and harshness of the freshly cured leaf. In the process the leaves are piled in "bulks" of about 4,000 pounds each to undergo a "sweating" or "fermentation" process in which temperature and humidity are carefully controlled. Proper heat control includes, among other things, breaking up the bulk, redistributing the tobacco, and adding water. Proper fermentation or aging requires the bulk to be reconstructed several times. This bulking process may last from four to eight months. When the tobacco is properly dried, cured, fermented, and aged, it is moved to long tables where the leaves are individually graded and sorted, after which they are tied in bundles called "hands" of about 30 to 35 leaves each, which are then baled for shipment. Equipment required for the work may include a steam-heated plant, platforms, thermometers, bulk covers, baling boxes and presses, baling mats and packing, sorting, and grading tables. (See Mitchell v. Budd, 350 U.S. 473, 475.) Employees performing any part of this processing prior to the stemming process, including the operations named in section 13(a)(21), may come within the exemption if they are otherwise qualified and if the tobacco on which they work is being processed for use as cigar wrapper tobacco.

§ 780.320 Particular operations which may be exempt.

(a) *General.* Section 13(a)(21) lists a number of operations as being included in the processing of shade-grown tobacco. Some of these are, and others are not, themsleves "processing" in the sense that performance of the operation changes the natural form of the commodity on which it is performed. All of the operations named and described in paragraph (b) of this section, however, are a necessary and integral part of the overall process of preparing shade-grown tobacco for use as cigar wrapper tobacco and, when performed as part of that process and prior to stemming of the tobacco, by an employee qualified under the terms of the section, will provide the basis for his exemption from the minimum wage and overtime provisions of the Act.

(b) *Particular operations*—(1) *Drying.* Drying includes the removal or lowering of the moisture content of the tobacco, whether by natural means or by exposure to heat from ovens, furnaces, etc.

(2) *Curing.* Curing includes removing the tobacco to the curing shed or barn and stringing the tobacco over slats.

(3) *Fermenting.* Fermenting includes the operations controlling the chemical changes which take place in the tobacco as the result of bulking and rebulking.

(4) *Bulking.* Bulking includes piling the tobacco in piles or bulks of about 4,000 pounds each for the purpose of fermenting the tobacco.

(5) *Rebulking.* Rebulking includes the breaking down of the tobacco bulks or piles and rearranging them so that the tobacco on the inside will be placed on the outside of the bulk and tobacco on the outside will be placed inside.

(6) *Sorting.* Sorting includes segregation of the tobacco leaves in connection with the grading and classifying of the cured tobacco.

(7) *Grading.* Grading includes sorting or classifying as to size and quality.

(8) *Aging.* Aging includes the curing process brought about by bulking.

(9) *Baling.* Baling includes the tying of the tobacco into "hands" and placing them in bales for shipment.

§ 780.321 Other processing operations.

The language of the section, namely; "including, but not limited to", extends the exemption for processing to include other operations in the processing of shade-grown tobacco besides those specifically enumerated. These additional operations include only those which are a necessary and integral part of preparing the shade-grown tobacco for use as cigar wrapper tobacco. These additional operations, like those enumerated in section 13(a)(21), must be performed before the tobacco has been stemmed. Stemming work and further work on the tobacco after stemming has been performed are nonexempt.

§ 780.322 Nonprocessing employees.

Only those employees who actually engage in the specified exempt processing activities are exempt. Clerical, maintenance and custodial workers are not included.

WORKWEEK APPLICATION OF EXEMPTION

§ 780.323 Workweek is used in applying the exemption.

The unit of time to be used in determining the application of the exemption to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n, 80 F. Supp. 953, affirmed 181 F. 2d 697.) A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.324 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(a)(21) is exempt from the Act's minimum wage and overtime requirements for that entire workweek.

§ 780.325 Exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt under this section 13(a)(21) and also engages in work to which the Act applies, and which is not exempt under this or any other section of the Act, he is not exempt that week. (See McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697; Mitchell v. Hunt 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle, 80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880.)

§ 780.326 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under section 13(a)(21) and the remainder of which is exempt under another section or sections of the Act, the exemptions may be combined. The employee's combination exemption is controlled in such a case by that exemption which is narrower in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under section 13(a)(21) and the rest is exempt only from the overtime pay requirements (as under section 7(c) for the first processing of an agricultural commodity in the area of production during seasonal operations), the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements.

Subpart E—Employment in Fruit and Vegetable Harvest Transportation Exempted From Minimum and Overtime Pay Requirements Under Section 13(a)(22)

INTRODUCTORY

§ 780.400 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart E together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(22) of the Fair Labor Standards Act of 1938, as amended. This section provides exemption from the minimum wage and overtime pay provisions of the Act for employees engaging in specified transportation activities when fruits and vegetables are harvested. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemption provided in section 13(a)(6) of the Act for employees employed in agriculture, and the exemption provided in section 13(a)(10) for certain operations on agricultural commodities within "the area of production", are not discussed in this subpart except in their relation to section 13(a)(22). The meaning and application of these exemptions are fully considered in Subparts B and H, respectively, of this Part 780.

§ 780.401 Statutory provision.

Section 13(a)(22) of the Act exempts from the minimum wage requirements of section 6 and from the overtime provisions of section 7:

any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not per-

formed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables.

§ 780.402 Legislative history of exemption.

Section 13(a)(22) was added to the Act by the Fair Labor Standards Amendments of 1961, effective September 3, 1961. The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. It would have altered the effect of holdings of the courts that operations such as those described in the amendment are not within the agriculture exemption provided by section 13(a)(6) when performed by employees of persons other than the farmer. (Chapman v. Durkin, 214 F. 2d 360, certiorari denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, certiorari denied, 348 U.S. 897.) The amendment was offered to exempt operations which, in the sponsor's view, were meant to be exempt under the original Act. (See 107 Cong. Rec. (daily ed.) p. 4523.) The Conference Committee, in changing the provision to make it a separate exemption made it clear that it was "not intended by the committee of conference to change by this exemption [for the described transportation employees] * * * the application of the Act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rept. No. 327, 87th Cong. 1st Sess., p. 18.)

§ 780.403 General scope of exemption.

The exemption provided by section 13(a)(22) is in two parts, subsection (A), which exempts employees engaged in the described transportation and preparation for transportation of fruits or vegetables, and subsection (B) which exempts employees engaged in the specified transportation of employees who harvest fruits or vegetables. The transportation and preparation for transportation of fruits and vegetables must be from the farm to a place of first processing or first marketing located in the same State where the farm is located; the transportation of harvesters must be between the farm and a place located in the same State as the farm.

§ 780.404 What determines the exemption.

The application of the exemptions provided by section 13(a)(22) depends on the nature of the employee's work and not on the character of the employer's business. An employee is not exempt in any workweek unless his employment in that workweek meets all the requirements for exemption. To determine whether an employee is exempt an examination should be made of the duties which that employee performs. Some employees of the employer may be exempt and others may not.

§ 780.405 Employers who may claim exemption.

A nonfarmer, as well as a farmer, who has an employee engaged in the operations specified in section 13(a)(22) may take advantage of the exemption. Employees of contractual haulers, packers, processors, wholesalers, "bird-dog" operators, and others may qualify for exemption. If an employee is engaged in the specified operations, the exemption will apply "whether or not" these operations are "performed by the farmer" who has grown the harvested fruits and vegetables. Where such operations are performed by the farmer, the engagement by his employee in them will provide a basis for exemption under section 13(a)(22) without regard to whether the farmer is performing the operations as an incident to or in conjunction with his farming operations. (See §§ 780.167–780.172 of this part.)

EXEMPT OPERATIONS ON FRUITS OR VEGETABLES

§ 708.406 Requisites for exemption generally.

Section 13(a)(22), in clause (A), provides an exemption from the minimum wage and overtime pay provisions of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged "in the transportation and preparation for transportation of fruits or vegetables"; and

(b) Such transportation must be transportation "from the farm"; and

(c) The destination to which the fruits or vegetables are transported must be "a place of first processing or first marketing"; and

(d) The transportation must be from the farm to such destination "within the same State".

§ 708.407 "Fruits or vegetables".

The exempt operations of preparing for transportation and transporting must be performed with respect to "fruits or vegetables". The intent of section 13(a)(22) is to exempt such operations on fruits or vegetables which are "just-harvested" and still in their raw and natural state. As explained at the time of adoption of the amendment on the floor of the House, the exemption was intended to eliminate the difference in treatment of farmers and nonfarmers with respect to exemption of such "handling or hauling of fruit or vegetables in their raw or natural state". (See 107 Cong. Rec. (daily ed.) p. 4523.) Transporting and preparing for transportation other farm products which are not fruits or vegetables are not exempt under section 13(a)(22). For example, operations on livestock, eggs, tobacco or poultry are nonexempt.

§ 780.408 Relation of employee's work to specified transportation.

In order for the exemption to apply to an employee, he must be engaged "in the transportation and preparation for transportation" of the just-harvested fruits or vegetables from the farm to the specified places within the same State. Engagement in other activities is not exempt work. The employee must be actually engaged in the described operations. The exemption is not available for other employees of the employer, such as office, clerical, and maintenance workers.

§ 780.409 "Transportation".

"Transportation", as used in section 13(a)(22), refers to the movement by any means of conveyance of fruits or vegetables from the farm to a place of first processing or first marketing in the same State. It includes only those activities which are immediately necessary to move the fruits or vegetables to the specified points and the return trips. Drivers, drivers' helpers, loaders and checkers perform work which is exempt. Transportation ends with delivery at the receiving platform of the place to which the fruits or vegetables are transported. (Mitchell v. Budd, 350 U.S. 473.) Thus, unloading at the delivery point by employees who did not transport the commodities would not be a part of the transportation activities under section 13(a)(22).

§ 780.410 Engagement in transportation and preparation.

Since transportation and preparation for transportation are both exempt activities, an employee who engages in both is performing exempt work. In referring to "the transportation and preparation for transportation" of the fruits or vegetables, the statute recognizes the two activities as interrelated parts of the single task of moving the commodities from the farm to the designated points. Accordingly, the word "and" between the words "transportation" and "preparation" is not considered to require that any employee be employed in both parts of the task in order to be exempt. The exemption may apply to an employee engaged either in transporting or preparing the commodities for transportation if he otherwise qualifies under section 13(a)(22).

§ 780.411 Preparation for transportation.

The "preparation for transportation" of fruits or vegetables includes only those activities which are necessary to prepare the fruits or vegetables for transportation from the farm to the places described in section 13(a)(22). These preliminary activities on the farm will vary with the commodity involved, with the means of the transportation to be used, and with the nature of operations to be performed on the commodity after delivery.

§ 780.412 Exempt preparation.

The following operations, if required in order to move the commodities from the farm and to deliver them to a place of first marketing or first processing, are considered preparation for transportation: assembling, weighing, placing the fruits or vegetables in containers such as lugs, crates, boxes or bags, icing, marking, labeling or fastening containers, and moving the commodities from storage or concentration areas on the farm to loading sites.

§ 780.413 Nonexempt preparation.

(a) *Retail packing.* Since the exemption, as expressly stated in section 13(a)(22), includes the transportation of the fruits or vegetables only to places of first marketing or first processing, packing or preparing for retail distribution is not exempt as "preparation for transportation".

(b) *Preparation for market.* No exemption is provided under section 13(a)(22) for operations performed on the farm in preparation for market (such as ripening, cleaning, grading, or sorting) rather than in preparation for the transportation described in the section. Exemption, if any, for these activities should be considered under sections 13(a)(6) and 3(f) of the Act. (See Subpart B of this Part 780.)

(c) *Processing or canning.* Processing is not exempt preparation for transportation. Thus, the canning of fruits or vegetables is not under section 13(a)(22).

§ 780.414 "From the farm".

The exemption applies only to employees whose work relates to transportation of fruits or vegetables "from the farm". The phrase "from the farm" makes it clear that the preparation of the fruits or vegetables should be performed on the farm and that the first movement of the commodities should commence at the farm. A "farm" has been interpreted under the Act to mean a tract of land devoted to one or more of the primary branches of farming outlined in the definition of "agriculture" in section 3(f) of the Act. These expressly include the cultivation and tillage of the soil and the growing and harvesting of any agricultural or horticultural commodities. Fruits and vegetables are such commodities. (See § 780.144 of this part for a fuller discussion of the term "farm".)

§ 780.415 "Place of first processing".

Under section 13(a)(22) the fruits or vegetables may be transported to only two types of places. One is a "place of first processing", which includes any place where canning, freezing, drying, preserving, or other operations which first change the form of the fresh fruits or vegetables from their raw and natural state are performed. (For overtime exemption applicable to "first processing", see Subpart J of this Part 780.) A plant which grades and packs only is not a place of first processing (Walling v. DeSoto Creamery and Produce Co., 51 F. Supp. 938). However, a packer's plant may qualify as a place of first marketing. (See § 780.416.)

§ 780.416 "Place of * * * first marketing".

A "place of * * * first marketing" is the second of the two types of places to which the freshly harvested fruits or vegetables may be transported from the farm under the exemption provided by section 13(a)(22). A place of first marketing is a place where the grower sells his fruits or vegetables or to which the grower's fruits or vegetables are first delivered there to be sold. A place of first marketing may also be a place of first processing (see Mitchell v. Budd, 350 U.S. 473) but it need not be. It is a farmer's market, and will include any packing plant or any establishment of a wholesaler or other distributor, cooperative, or processor to which the farmer's fruits or vegetables are first delivered for sale. (See 107 Cong. Rec. (daily ed.) p. 4523; see also the discussion of "delivery to market" by a farmer in § 780.169 of this part.) If the farmer sells his crop in the field, "first marketing" has taken place and no transportation from the farm could qualify as transportation "to a place of * * * first marketing", but if the transportation is to a plant where the fruits or vegetables are first processed, it could qualify as transportation "to a place of first processing" notwithstanding that title to the commodities had passed from the farmer to another person. (See § 780.415.) Transportation to places which are not first processing or first marketing places is not exempt.

§ 780.417 "Within the same State".

To qualify for exemption under section 13(a)(22), the transportation of the fruits or vegetables must be made to the specified places "within the same State" in which the farm is located. Transportation is made to a place "within the same State" when the commodities are taken from the farm, hauled and delivered within the same State to first markets or first processors for sale or processing at the place of delivery. The exemption is not provided for transportation to any place of first marketing or first processing across State lines and does not apply to any part of the transportation within the State of fruits or vegetables destined for a place in another State at which they are to be first marketed or first processed. Transportation from the farm to an intermediate point in such a journey located within the same State would not qualify for exemption; it would make no difference that the intermediate point is a place of first marketing or first processing for other fruits or vegetables if it is not actually such for the fruits or vegetables being transported. On the other hand, where the place to which fruits or vegetables are transported from the farm within the same State is actually the place of first marketing or first processing of those very commodities, transportation of the goods across State lines by the first-market operator or first processor, after such delivery to him within the State, does not affect the nature of the delivery to him as one made within the State.

EXEMPT TRANSPORTATION OF FRUIT OR VEGETABLE HARVEST EMPLOYEES

§ 780.418 Requisites for exemption generally.

Section 13(a)(22), in clause (B), provides an exemption from the minimum wage and overtime pay provisions of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged "in transportation" of harvest workers; and

(b) The harvest workers transported must be "persons employed or to be employed in the harvesting of fruits or vegetables"; and

(c) The employee's transportation of such harvest workers must be "between the farm and any point within the same State".

§ 780.419 Engagement "in transportation" of harvest workers.

In order for the exemption to apply, the employees must be engaged "in transportation" of the specified harvest workers between the points stated in the statute. Actual engagement "in transportation" of such workers is required. Engagement in other activities is not exempt work. Drivers, driver's helpers and others who are engaged in the actual movement of the persons transported may qualify for the exemption. Office employees, garage mechanics, and other employees of the employer who may perform supporting activities but do not engage in the actual transportation work do not come within the exemption. There is no restriction in the statute as to the means of conveyance used; the exempt transportation may be by land, air, or water in any vehicle or conveyance appropriate for the purpose. Employees of any employer who are engaged in the specified transportation activities may qualify for exemption; it is not necessary that the transportation be performed by the farmer. (See § 780.405.) Transportation by a farmer of his field workers may also qualify the transportation workers for exemption under section 13(a)(6). (See Maneja v. Waialua, 349 U.S. 254.)

§ 780.420 Workers transported must be fruit or vegetable harvest workers.

Clause (a) of section 13(a)(22) exempts only those transportation employees who are engaged in transportation "of persons employed or to be employed in the harvesting of fruits or vegetables." Transportation of harvest workers is not exempt unless the workers are fruit or vegetable harvest workers; transportation of workers employed or to be employed in harvesting other commodities is not exempt work under section 13(a)(22). Nor does the exemption apply to the transportation of persons for the purpose of planting or cultivating any crop, whether or not it is a fruit or a vegetable crop.

§ 780.421 Persons "employed or to be employed" in fruit or vegetable harvesting.

The exemption applies to the transportation of persons "employed or to be employed" in the harvesting of fruits or vegetables. Included in this phrase are persons who at the time of transportation are currently employed in harvesting fruits or vegetables and others who, regardless of their occupation at such time, are being transported to be employed in such harvesting. The conveying of persons to a farm from a factory, packinghouse or processing plant would be exempt where their transportation is for the purpose of their employment in harvesting the named commodities. On the other hand, the transportation of harvest workers, who have been employed in the fruit or vegetable harvest,

to such a plant for the purpose of their employment in the plant would not be exempt. The transportation must come within the intended scope of section 13(a)(22), which is to provide exemption for "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. daily ed. p. 4523).

§ 780.422 "Harvesting" of fruits or vegetables.

Only transportation of employees employed or to be employed in the "harvesting" of fruits or vegetables is exempt under clause (B) of section 13(a)(22). As indicated in § 780.420, such harvest workers do not include employees employed or to be employed in planting or cultivating the corp. Nor do they include employees employed or to be employed in operations subsequent to harvesting, even where such operations constitute "agriculture" within the definition in section 3(f) of the Act. "Harvesting" refers to the removal of fruits or vegetables from their growing position in the fields and, as explained in § 780.127 of this part, includes the operations customarily performed in connection with this severance of the crops from the soil (see Vives v. Sarralles, 145 F. 2d 552), but does not extend to operations subsequent to and unconnected with the actual severance process or to operations performed off the farm. It may include moving the fruits or vegetables to concentration points on the farm, but would not include packingshed or pea-vinery operations or other operations performed in preparation for market rather than as part of harvesting, such as ripening, cleaning, grading, sorting, drying and storing. If the workers are employed or to be employed in "harvesting", it does not matter for purposes of the exemption whether a farmer or someone else employs them or does the harvesting. It is the character of their employment as "harvesting" and not the identity of their employer or the owner of the crop which determines whether their transportation to and from the farm will provide a basis for exemption of the transportation employees.

§ 780.423 "Between the farm and any point within the same State".

The transportation of fruit or vegetable harvest workers is permitted "between the farm and any point within the same State". The exempt transportation of such harvest workers therefore includes their movement to and from the farm (see 107 Cong. Rec. (daily ed.) p. 4523; see § 780.414 for meaning of "farm"). Such transportation must, however, be from or to points "within the same State" in which the farm is located. Crossing of State lines is not contemplated. Thus, the exemption would not apply to day-haul transportation of fruit or vegetable harvest workers between a town in one State and farms located in another State. Also, the intent to exempt "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. (daily ed.) p. 4523) within a single State would not justify exemption of the transportation of workers from one State to another to engage in harvest work in the latter State. The exemption does not apply to transportation of persons on any trip, or any portion of a trip, in which the point of origin or point of destination is in another State. Subject to these limitations, however, where employees are being transported for employment in harvesting they may be picked up at any place within the State, including other farms, packing or processing establishments, factories, transportation terminals and other places. The broad term "any point" must be interpreted in the light of the purpose of the exemption to facilitate the harvesting of fruits or vegetables. Transportation from a farm to "any point" within the same State (such as a factory or processing plant) where some other purpose than harvesting is served is not exempt.

Workweek Applications of Exemption

§ 780.424 Workweek is used in applying the exemption.

The unit of time to be used in determining the application of the section 13(a)(22) exemption to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697). A workweek is a fixed and regularly recurring period of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. The workweek may not be changed for the purpose of escaping the requirements of the Act.

§ 780.425 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(a)(22) is exempt from the Act's minimum wage and overtime requirements for the entire week, whether such work is that described in Clause (A) or in Clause (B) or both.

§ 780.426 Exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt under this section 13(a)(22) and also engages in work to which the Act applies, not exempt under this or any other section of the Act, he is not exempt that week (See McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697; Mitchell v. Hunt, 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle (80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880).

§ 780.427 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under section 13(a)(22) and the remainder of which is exempt under another section or sections of the Act, the exemptions may be combined. The employee's combination exemption is controlled by that exemption which is narrower in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under section 13(a)(22) and the rest is exempt only from the overtime pay requirements (as under section 7(c) for the first processing, canning or packing of perishable or seasonal fresh fruits or vegetables), the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements.

Subpart F—Employment in Ginning of Cotton for Market Exempted From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(18)

Introductory

§ 780.500 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart F together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(18) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for employees engaged in ginning of cotton for market. in any place of employment located in a county where cotton is grown in commercial quantities. As appears more fully in Subpart A, of this part interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The minimum wage and overtime exemptions provided in section 13(a)(6) of the Act for employees employed in agriculture and in section 13(a)(10) for certain related employment within the "area of production", and the overtime exemptions provided for cotton ginning by section 7(c) and under section 7(b)(3) of the Act, are not discussed in this subpart except in their relation to section 13(a)(18). The meaning and application of these other exemptions are fully considered in Subparts B, H, and J, respectively, of this Part 780.

§ 780.501 Statutory provisions.

Section 13(a)(18) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 and from the overtime provisions of section 7:

> any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities.

Section 13(a)(18) was added to the Act by the Fair Labor Standards Amendments of 1961, which at the same time removed ginning from the operations named in section 13(a)(10) (which provides a minimum wage and overtime exemption for individuals engaged in the named operations if they are employed within the "area of production" as defined by the Secretary of Labor). Accordingly, since September 3, 1961 the effective date of the 1961 amendments, section 13(a)(18) and not section 13(a)(10) determines whether an employee engaged in ginning cotton for market is exempt from the minimum wage as well

as the overtime pay provisions of the Act. The legislative history of the exemption indicates that it was the intent of the amendments to relieve cotton ginners from the application of the "area of production" requirements of section 13(a)(10) and to substitute therefor the requirement that the place of the employee's employment be in a county where cotton is grown in commercial quantities (107 Cong. Rec. (daily ed.) p. 5887).

§ 780.502 What determines application of the exemption.

It is apparent from the language of section 13(a)(18) that the application of this exemption depends upon the nature and purpose of the work performed by the individual employee for whom exemption is sought and on the location of the place of employment where the work is done. It does not depend upon the character of the business of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may be exempt while others may not.

§ 780.503 Basic conditions of exemption.

Under section 13(a)(18) of the Act all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must be "engaged in ginning".

(b) The commodity ginned must be cotton.

(c) The ginning of the cotton must be "for market".

(d) The place of employment in which this work is done must be "located in a county where cotton is grown in commercial quantities." The following sections discuss the meaning and application of these requirements.

GINNING OF COTTON FOR MARKET

§ 780.504 "Ginning" of cotton.

The term "ginning" refers to operations performed on "seed cotton" to separate the seeds from the spinnable fibers. (Moore v. Farmer's Manufacturing and Ginning Co., 51 Ariz. 378, 77 F. 2d 209; Frazier v. Stone, 171 Miss. 56, 156 So. 596). "Seed cotton" is cotton in its natural state (Burchfield v. Tanner, 142 Tex. 404, 178 S.W. 2d 681, 683) and the ginning to which section 13(a)(18) refers is the "first processing" of this agricultural commodity (107 Cong. Rec. (daily ed.) p. 5887), which converts it into the marketable product commonly known as "lint cotton" (Mangan v. State, 76 Ala. 60, 66) by removing the seed from the lint and then pressing and wrapping the lint into bales. Ginning, as used in the exemption, includes reginning and rebaling where necessary, as in the case of damaged or loose cotton, since these operations are performed in the same way and for the same purpose as the original ginning.

§ 780.505 Ginning of "cotton".

Only the ginning of "cotton" is within the exemption. An employee engaged in ginning of moss, for example, would not be exempt. The reconditioning of cotton waste resulting from spinning or oil mill operations is not included, since such waste is not the agricultural commodity in its natural state for whose first processing the exemption was provided. (See 107 Cong. Rec. (daily ed.) p. 5887.) The "cotton", "seed cotton", and "lint cotton" ginned by ordinary gins do not include "linter" or "Grabbot" cotton, obtained by reginning cotton seed and hard locks of cotton mixed with hulls, bolls, and other substances which could not be removed by ordinary ginning (Mississippi Levee Com'rs v. Refuge Cotton Oil Co., 91 Miss. 480, 44 So. 828, 829).

§ 780.506 Exempt ginning limited to first processing.

As indicated in § 780.504, the ginning for which the exemption is intended is the first processing of the agricultural commodity, cotton, in its natural form, into lint cotton for market. It does not include further operations which may be performed on the cottonseed or the cotton lint, even though such operations are performed in the same establishment where the ginning is done. Delinting, which is the removal of short fibers and fuzz from cottonseed, is not exempt under section 13(a)(18). It is not first processing of the seed cotton; rather, it is performed on cottonseed, usually in cottonseed processing establishments, and even if regarded as ginning (Mitchell v. Burgess, 239 F. 2d 484) it is not the ginning of cotton for market contemplated by section 13(a)(18). It may come within the overtime exemption provided in section 7(c) of the Act for processing cottonseed. (See Subpart J of this Part 780.) Compressing of cotton, which is the pressing of bales into higher density bales than those which come from the gin, is a further processing of the cotton entirely removed from ginning (Peacock v. Lubbock Compress Co., 252 F. 2d 892). Employees engaged in compressing may, however, be subject to exemption from minimum wages and overtime pay under section 13(a)(10) (Subpart H of this Part 780) or from overtime pay under section 7(c) (Subpart J of this Part 780) if the requisite conditions of the particular exemption are met.

§ 780.507 Cotton must be ginned "for market".

As noted in § 780.504, it is ginning of seed cotton which converts the cotton to marketable form. Section 13(a)(18), however, provides an exemption only where the cotton is actually ginned "for market". The ginning of cotton for some other purpose is not exempt work. Cotton is not ginned "for market" if it is not to be marketed in the form in which the ginning operation leaves it. Cotton is not ginned "for market" if it is being ginned preliminary to further processing operations to be performed on the cotton by the same employer before marketing the commodity in an altered form. (Compare Mitchell v. Park (D. Minn.), 14 WH Cases 43, 36 Labor Cases 65, 191; Bush v. Wilson & Co., 157 Kans. 82, 138 P. 2d 457; Gaskin v. Clell Coleman & Sons, 2 WH Cases 977.) The meaning of "for market" as used in section 13(a)(18) is not different from its meaning in section 13(a)(10), where it was applied to ginning prior to the 1961 amendments. A discussion of the term "for market" as used in section 13(a)(10) is contained in Subpart H of this Part 780.

EMPLOYEES "ENGAGED IN" GINNING

§ 780.508 Who may qualify for the exemption generally.

The exemption applies to "any employee engaged in" ginning of cotton. This means that the exemption may apply to an employee so engaged, no matter by whom he is employed. Employees of the gin operator, of an independent contractor, or of a farmer may come within the exemption in any workweek when all other conditions of the exemption are met. To come within the exemption, however, an employee's work must be an integral part of ginning of cotton, as previously described. The courts have uniformly held that exemptions in the Act must be construed strictly to carry out the purpose of the Act. (See § 780.2, in Subpart A of this Part 780.) No operation in which an employee engages in a place of employment where cotton is ginned is exempt unless it comes within the meaning of the term "ginning".

§ 180.509 Employees engaged in exempt operations.

Employees engaged in actual ginning operations, as described in § 780.504, will come within the exemption if all other conditions of section 13(a)(18) are met. These include the ginners and ginners' helpers, pressmen, and any others whose work is so directly and physically connected with the ginning process itself that it constitutes an integral part of its actual performance.

§ 780.510 Employees not "engaged in" ginning.

Since an employee must actually be "engaged in" ginning of cotton to come within the exemption, an employee engaged in other tasks, not an integral part of "ginning" operations, will not be exempt. (See, for rule that only the employees performing the work described in the exemption are exempt, Mitchell v. Stinson, 217 F. 2d 210; Phillips v. Meeker Cooperative Light and Power Ass'n., 63 F. Supp. 743, affirmed 158 F. 2d 698; Jenkins v. Durkin, 208 F. 2d 941; Heaburg v. Independent Oil Mill, Inc., 46 F. Supp. 751; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969.) Accordingly, section 13(a)(18) does not provide any exemption for office employees, watchmen, or other employees not directly and physically connected with the ginning process itself who are engaged in general maintenance work or custodial or clerical duties. Similarly, no employee employed in a cotton gin during the off-season when no ginning is being performed can come within the exemption, because he cannot then be engaged in ginning.

"COUNTY WHERE COTTON IS GROWN IN COMMERCIAL QUANTITIES"

§ 780.511 Exemption as dependent upon place of employment generally.

Under section 13(a)(18), if the employee's work meets the requirements

for exemption, the location of the place of employment where he performs it will determine whether the exemption is applicable. This location is required to be in a county where cotton is grown in commercial quantities. The exemption will apply, however, to an employee who performs such work in "any" place of employment in such a county. The place of employment in which he engages in ginning need not be an establishment exclusively or even principally devoted to such operations; nor is it important whether the place of employment is on a farm or in a town or city in such a county, or whether or to what extent the cotton ginned there comes from the county in which the ginning is done or from nearby or distant sources. It is enough if the place of employment where the employee is engaged in ginning cotton for market is "located" in such a county.

§ 780.512 "County".

As used in the section 13(a)(18) exemption, the term "county" refers to the political subdivision of a State commonly known as such, whether or not such a unit bears that name in a particular State. It would, for example, refer to the political subdivision known as a "parish" in the State of Louisiana. A place of employment would not be located in a county, within the meaning of the exemption, if it were located in a city which, in the particular State, was not a part of any county.

§ 780.513 "County where cotton is grown".

For the exemption to apply, the employee must be ginning cotton in a place of employment in a county where cotton "is grown" in the described quantities. It is the cotton grown, not the cotton ginned in the place of employment, to which the quantity test is applicable. The quantities of cotton ginned in the county do not matter, so long as the requisite quantities are grown there.

§ 780.514 "Grown in commercial quantities".

Cotton must be "grown in commercial quantities" in the county where the place of employment is located if an employee ginning cotton in such place is to be exempt under section 13(a)(18). The term "commercial quantities" is not defined in the statute, but in the cotton-growing areas of the country there should be little question in most instances as to whether commercial quantities of cotton are grown in the county where the ginning is done. If it should become necessary to determine whether commercial quantities are grown in a particular county, it would appear appropriate in view of crop-year variations to consider average quantities produced over a representative period such as five years. On the question of whether the quantities grown are "commercial" quantities, the trade understanding of what are "commercial" quantities of cotton would be important. It would appear appropriate also to measure "commercial" quantities in terms of marketable lint cotton in bales rather than by acreages or amounts of seed cotton grown, since seed cotton is not a commercially marketable product (Mangan v. State, 76 Ala. 60). Also, production of a commodity in "commercial" quantities generally involves quantities sufficient for sale with a reasonable expectation of some return to the producers in excess of costs (Bianco v. Hess (Ariz.), 339 P. 2d 1038; Nystel v. Thomas (Tex. Civ. App.) 42 S.W. 2d 168).

Workweek Application of Exemption

§ 780.515 Workweek is used in applying the exemption.

Once the growing of cotton in commercial quantities in the county where the employee's place of employment is located has been tested by a period appropriate for that purpose and established, the unit of time to be used in determining the application of the section 13(a)(18) exemption to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697.) A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.516 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(a)(18) is exempt from the Act's minimum wage and overtime pay requirements for the entire week, if he is so engaged in a place of employment located in a county where cotton is grown in commercial quantities.

§ 780.517 Exempt and nonexempt work.

Where an employee in the same workweek is engaged in ginning of cotton for market which is exempt under section 13(a)(18) if engaged in for the entire workweek, and also engages in work to which the Act applies and which is not exempt under this or any other section of the Act, he is not exempt that week. (See McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 397; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle, 80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880; Waialua v. Maneja, 77 F. Supp. 480.)

§ 780.518 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under section 13(a)(18) and the remainder of which is exempt under another section or sections of the Act, the exemptions may be combined. If the scope of the exemptions is not the same, the combination exemption applicable to the employee is controlled by the exemption which is more limited in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under section 13(a)(18) and the rest is exempt only from the overtime pay requirements, as under the section 7(c) exemption for the processing of cottonseed, the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements.

Subpart G—Employment by Small Country Elevators Within Area of Production; Exemption From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(17)

Introductory

§ 780.600 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this subpart together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(17) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for employees employed by certain country elevators "within the area of production", as defined by the Secretary of Labor. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemptions provided in section 13(a)(6) of the Act for employees employed in agriculture and in section 13(a)(10) for certain related employment within the "area of production", and the partial overtime exemption for seasonal industries under section 7(b)(3) of the Act are not discussed in this subpart except in their relation to section 13(a)(17). The meaning and application of these exemptions are discussed in Subparts B, H, and J, respectively, of this Part 780.

§ 780.601 Statutory provision.

Section 13(a)(17) of the Fair Labor Standards Act, effective September 3, 1961, exempts from the minimum wage requirements of section 6 and from the overtime provisions of section 7:

> any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm: *Provided*, That no more than five employees are employed in the establishment in such operations * * *

§ 780.602 What determines application of the exemption.

The application of the section 13(a)(17) exemption depends on the employment of the employee by an establishment of the kind described in the section, and on such employment "within the area of production" as defined by regulation. In any workweek when an employee is employed in country elevator activities by such an establishment

within the area of production, the minimum wage and overtime pay requirements of the Act will not apply to him.

§ 780.603 Basic requirements for exemption.

The basic requirements for exemption of country elevator employees under section 13(a)(17) of the Act are as follows:

(a) The employing establishment must—

(1) Be an establishment "commonly recognized as a country elevator", and

(2) Have not more than five employees employed in its operations as such; and

(b) The employee must—

(1) Be "employed by" such establishment, and

(2) Be employed "within the area of production", as defined by the Secretary of Labor.

All the requirements must be met in order for the exemption to apply to an employee in any workweek. The requirements in section 13(a)(17) are "explicit prerequisites to exemption" and the burden of showing that they are satisfied rests upon the employer who asserts that the exemption applies (Arnold v. Kanowsky, 361 U.S. 388). In accordance with the general rules stated in § 780.2 of Subpart A of this Part 780, this exemption is to be narrowly construed and applied only to those establishments plainly and unmistakably within its terms and spirit. The requirements for its application will be separately discussed below.

"ESTABLISHMENT COMMONLY RECOGNIZED AS A COUNTRY ELEVATOR"

§ 780.604 Dependence of exemption on nature of employing establishment.

If an employee is to be exempt under section 13(a)(17), he must be employed by an "establishment" which is "commonly recognized as a country elevator". If he is employed by such an establishment, the fact that it may be part of a larger enterprise which also engages in activities that are not recognized as those of country elevators (see Tobin v. Flour Mills, 185 F. 2d. 596) would not make the exemption inapplicable.

§ 780.605 Meaning of "establishment".

The word "establishment" has long been interpreted by the Department of Labor and the courts to mean a distinct physical place of business and not to include all the places of business which may be operated by an organization (Phillips v. Walling, 334 U.S. 490; Mitchell v. Bekins Van and Storage Co., 352 U.S. 1027). Thus, in the case of a business organization which operates a number of country elevators (see Tobin v. Flour Mills, 185 F. 2d 596), each individual elevator or other place of business would constitute an establishment, within the meaning of the Act. Country elevators are usually one-unit places of business with, in some cases, an adjoining flat warehouse. No problem exists of determining what is the establishment in such cases. However, where separate facilities are used by a country elevator, a determination must be made, based on their proximity to the elevator and their relationship to its operations, on whether the facilities and the elevator are one or more than one establishment. If there are more than one, it must be determined by which establishment the employee is employed and whether that establishment meets the requirements of section 13(a)(17) before the application of the exemption to the employee can be ascertained (compare Mitchell v. Cammill, 245 F. 2d 207; Remington v. Shaw (W.D. Mich.), 2 WH Cases 262.)

§ 780.606 Recognition of character of establishment.

A further requirement for exemption is that the establishment must be "commonly recognized" as a country elevator. The word "commonly" means ordinarily or generally and the term "recognized" means known. An elevator should be generally known by the public as a country elevator. This requirement imposes, on the establishment for whose employees exemption is sought, the obligation to demonstrate that it engages in the type of work and has the attributes which will cause the general public to know it as a country elevator. The recognition which the statute requires must be shown to exist if the employer seeks to take the benefit of the exemption (see Arnold v. Kanowsky, 361 U.S. 388, 395).

§ 780.607 Establishments "commonly recognized" as country elevators.

In determining whether a particular establishment is one that is "commonly recognized" as a country elevator—and this must be true of the particular establishment if the exemption is to apply—it should be kept in mind that the intent of section 13(a)(17) is to "exempt country elevators that market farm products, mostly grain, for farmers" (107 Cong. Rec. (daily ed.) P. 5883). It is also appropriate to consider the characteristics and functions which the courts and government agencies have recognized as those of "country elevators" and the distinctions which have been recognized between country elevators and other types of establishments. For example, in proceedings to determine industries of a seasonal nature under section 7(b)(3) of the Act and Part 526 of the regulations in this chapter, "country" grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk grain storing establishments, and "flat warehouses" in which grain is stored in sacks, have been recognized as distinct types of establishments engaged in grain storage. (See 24 F.R. 2584; 3581.) As the legislative history of the exemption cited above makes clear, country elevators handle "mostly grain". The courts have recognized that the terms "country elevator" and "country grain elevator" are interchangeable (the term "country house" has also been recognized as synonymous), and that there are significant differences between country elevators and other types of establishments engaged in grain storage (see Tobin v. Flour Mills, 185 F. 2d 596; Mitchell v. Sampson Const. Co. (D. Kan.) 14 WH Cases 269).

§ 780.608 A country elevator is located near and serves farmers.

Country elevators, as commonly recognized, are typically located along railroads in small towns or rural areas near grain farmers, and have facilities especially designed for receiving bulk grain by wagon or truck from farms, elevating it to storage bins, and direct loading of the grain in its natural state into railroad boxcars. The principal function of such elevators is to provide a point of initial concentration for grain grown in their local area and to handle, store for limited periods, and load out such grain for movement in carload lots by rail from the producing area to its ultimate destination. They also perform a transport function in facilitating the even and orderly movement of grain over the interstate network of railroads from the producing areas to terminal elevators, markets, mills, processors, consumers and to seaboard ports for export. The country elevator is typically the farmer's market for his grain or the point at which his grain is delivered to carriers for transportation to market. The elevator may purchase the grain from the farm or store and handle it for him, and it may also store and handle substantial quantities of grain owned by or pledged to the government under a price-support program. Country elevators customarily receive, weigh, test, grade, clean, mix, dry fumigate, store, and load out grain in its natural state, and provide certain incidental services and supplies to farmers in the locality. The foregoing attributes of country elevators have been recognized by the courts. See, for example, Mitchell v. Sampson Const. Co. (D. Kan.) 14 WH Cases 269; Tobin v. Flour Mills, 185 F. 2d 596; Holt v. Barnesville Elevator Co., 145 F. 2d 250; Remington v. Shaw (W.D. Mich), 2 WH Cases 262.

§ 780.609 Size and equipment of a country elevator.

Typically, the establishments commonly recognized as country elevators are small. Most of the establishments intended to come within the exemption have only one or two employees (107 Cong. Rec. (daily ed.) p. 5883), although some country elevators have a larger number. (See Holt v. Barnesville Elevator Co., 145 F. 2d 250.) Establishments with more than five employees are not within the exemption. (See § 780.612.) The storage capacity of a country elevator may be as small as 6,000 bushels (see Tobin v. Flour Mills, 185 F. 2d 596) and will generally range from 15,000 to 50,000 bushels. As indicated in § 780.608 country elevators are equipped to receive grain in wagons or trucks from farmers and to load it in railroad boxcars. The facilities typically include scales for weighing the farm vehicles loaded with grain, grain bins, cleaning and mixing machinery, driers for pre-storage drying of grain and endless conveyor belts or chain scoops to carry grain from the ground to the top of the elevator. The facilities for receiving grain in truckloads or wagon loads from farmers and the limited storage capacity together with location of the ele-

vator in or near the grain-producing area, serve to distinguish country elevators from terminal or subterminal elevators, to which the exemption is not applicable. The latter are located at terminal or interior market points, receive grain in carload lots, and receive the bulk of their grain from country elevators. Although some may receive grain from farms in the immediate area, they are not typically equipped to receive grain except by rail. (See Tobin v. Flour Mills, supra; Mitchell v. Sampson Const. Co. (D.Kan.) 14 WH Cases 269.) It is the facilities of a country elevator for the elevation of bulk grain and the discharge of such grain into rail cars that make it an "elevator" and distinguish it from warehouses that perform similar functions in the flat warehousing, storage and marketing for farmers of grain in sacks. Such warehouses are not "elevators" and therefore do not come within the section 13(a)(17) exemption.

§ 780.610 A country elevator may sell products and services to farmers.

Section 13(a)(17) expressly provides that an establishment commonly recognized as a country elevator, within the meaning of the exemption, includes "such an establishment which sells products and services used in the operation of a farm". This language makes it plain that if the establishment is "such an establishment", that is, if its functions and attributes are such that it is "commonly recognized as a country elevator" but not otherwise, exemption of its employees under this section will not be lost solely by reason of the fact that it sells products and services used in the operation of a farm. Establishments commonly recognized as country elevators, especially the smaller ones, not only engage in the storing of grain but also conduct various merchandising or "sideline" operations as well. (See Findings and Determination of the Presiding Officer (in proceedings for determination of industries of a seasonal nature under section 7(b)(3) of the Act and Part 526 of the regulations in this chapter), Wage and Hour Division Release G–143, April 11, 1941, p. 4.) They may distribute feed grains to feeders and other farmers, sell fuels for farm use, sell and treat seeds, and sell other farm supplies such as fertilizers, farm chemicals, mixed concentrates, twine, lumber, and farm hardware supplies and machinery. (See Tobin v. Flour Mills, 185 F. 2d 596; Holt v. Barnesville Elevator Co., 145 F. 2d 250). Services performed for farmers by country elevators may include grinding of feeds, cleaning and fumigating seeds, supplying bottled gas, and gasoline station services. As conducted by establishments commonly recognized as country elevators, the selling of goods and services used in the operation of a farm is a minor and incidental secondary activity and not a main business of the elevator (see Tobin v. Flour Mills, supra; Holt v. Barnesville Elevator Co., supra).

§ 780.611 Exemption of mixed business applies only to country elevators.

The language of section 13(a)(17) permitting application of the exemption to country elevators selling products and services used in the operation of a farm does not extend the exemption to an establishment selling products and services to farmers merely because of the fact that it is also equipped to provide elevator services to its customers. The exemption will not apply if the extent of its business of making sales to farmers is such that the establishment is not commonly known as a "country elevator" or is commonly recognized as an establishment of a different kind. As the legislative history of the exemption indicates, its purpose is limited to exempting country elevators that market farm products, mostly grain, for farmers who are working long workweeks and need to have the elevator facilities open and available for disposal of their crops during the same hours that are worked by the farmers. (See 107 Cong. Rec. (daily ed.) p. 5883.) The reason for the exemption does not justify its application to employees selling products and services to farmers otherwise than as an incidental and subordinate part of the business of a country elevator as commonly recognized. An establishment making such sales must be "such an establishment" to come within this exemption. An employer may, however, be engaged in the business of making sales of goods and services to farmers in an establishment separate from the one in which he provides the recognized country elevator services. In such event, the exemption of employees who work in both establishments may depend on whether the work in the sales establishment comes within another exemption provided by the Act. (See Remington v. Shaw (W.D. Mich.), 2 WH Cases 262, and infra, § 780.624).

Employment of "No More Than Five Employees"

§ 780.612 Limitation of exemption to establishments with five or fewer employees.

If the operations of an establishment are such that it is commonly recognized as a country elevator, its employees may come within the section 13(a)(17) exemption provided that "no more than five employees are employed in the establishment in such operations". The exemption is intended, as explained by its sponsor, to "affect only institutions that have five employees or less" (107 Cong. Rec. (daily ed.) p. 5883). Since the Act is applied on a workweek basis, a country elevator is not an exempt place of work in any workweek in which more than five employees are employed in its operations.

§ 780.613 Determining the number of employees generally.

The number of employees referred to in section 13(a)(17) is the number "employed in the establishment in such operations". The determination of the number of employees so employed involves a consideration of the meaning of employment "in the establishment" and "in such operations" in relation to each other. If, in any workweek, an employee is "employed in the establishment in such operations" for more than a negligible period of time, he should be counted in determining whether, in that workweek, more than five employees were so employed. An employee so employed must be counted for this purpose regardless of whether he would, apart from this exemption, be within the coverage of the Act. Also, as noted in the following discussion, the employees to be counted are not necessarily limited to employees directly employed by the country elevator but may include employees directly employed by others who are engaged in performing operations of the elevator establishment.

§ 780.614 Employees employed "in such operations" to be counted.

(a) The five-employee limitation on the exemption for country elevators relates to the number of employees employed in the establishment "in such operations". This means that the employees to be counted include those employed in, and do not include any who are not employed in, the operations of the establishment commonly recognized as a country elevator, including the operations of such an establishment in selling products and services used in the operation of a farm, as previously explained.

(b) In some circumstances, an employee employed in an establishment commonly recognized as a country elevator may, during his workweek, be employed in work which is not part of the operations of the elevator establishment. This would be true, for example, in the case of an employee who spends his entire workweek in the construction of an overflow warehouse for the elevator. Such an employee would not be counted in that workweek because constructing a warehouse is not part of the operations of the country elevator but is an entirely distinct activity.

(c) Employees employed by the same employer in a separate establishment in which he is engaged in a different business, and not employed in the operations of the elevator establishment, would not be counted.

(d) Employees not employed by the elevator establishment who come there sporadically, occasionally, or casually in the course of their duties for other employers are not employed in the operations of the establishment commonly recognized as a country elevator and would not be counted in determining whether the five-employee limitation is exceeded in any workweek. Examples of such employees are employees of a restaurant who bring food and beverages to the elevator employees, and employees of other employers who make deliveries to the establishment.

§ 780.615 Counting employees "employed in the establishment".

(a) Employees employed "in the establishment", if employed "in such operations" as previously explained, are to be counted in determining whether the five-employee limitation on the exemption is exceeded.

(b) Employees employed "in" the establishment clearly include all employees engaged, other than casually or sporadically, in performing any duties of their

employment there, regardless of whether they are direct employees of the country elevator establishment or are employees of a farmer, independent contractor, or other person who are suffered or permitted to work (see Act, section 3(g)) in the establishment. However, tradesmen, such as dealers and their salesmen, for example, are not employed in the elevator simply because they visit the establishment to do business there. Neither are workers who deliver, on behalf of their employers, goods used in the sideline business of the establishment to be considered employed in the elevator.

(c) The use of the language "employed in" rather than "engaged in" makes it plain also that the employees to be counted include all those employed by the establishment in its operations without regard to whether they are engaged in the establishment or away from it in performing their duties. This has been the consistent interpretation of similar language in other sections of the Act.

EMPLOYEES "EMPLOYED * * * BY" THE COUNTRY ELEVATOR ESTABLISHMENT

§ 780.616 Exemption of employees "employed * * * by" the establishment.

If the establishment is a country elevator establishment qualified for exemption as previously explained, and if the "area of production" requirement is met (see § 780.620), any employee "employed * * * by" such establishment will come within the section 13(a)(17) exemption. This will bring within the exemption employees who are engaged in duties performed away from the establishment as well as those whose duties are performed in the establishment itself, so long as such employees are "employed * * * by" the country elevator establishment within the meaning of the Act. The employees employed "by" the establishment, who may come within the exemption if the other requirements are met, are not necessarily identical with the employees employed "in the establishment in such operations" who must be counted for purposes of the five-employee limitation since some of the latter employees may be employed by another employer. (See §§ 780.612–780.615.)

§ 780.617 Determining whether there is employment "by" the establishment.

(a) No single test will determine whether a worker is in fact employed "by" a country elevator establishment. This question must be decided on the basis of the total situation (Rutherford Food Corp. v. McComb, 331 U.S. 722; U.S. v. Silk, 331 U.S. 704). Clearly, an employee is so employed where he is hired by the elevator, engages in its work, is paid by the elevator and is under its supervision and control.

(b) "Employed by" requires that there be an employer-employee relationship between the worker and the employer engaged in operating the elevator. The fact, however, that the employer carries an employee on the payroll of the country elevator establishment which qualifies for exemption does not automatically extend the exemption to that employee. In order to be exempt an employee must actually be "employed by" the exempt establishment. This means that whether the employee is performing his duties inside or outside the establishment, he must be employed in the work of the exempt establishment itself in activities within the scope of its exempt business in order to meet the requirement of actual employment "by" the establishment (see Walling v. Connecticut Co., 154 F. 2d 552).

(c) In the case of employers who operate multi-unit enterprises and conduct business operations in more than one establishment (see Tobin v. Flour Mills, 185 F. 2d 596; Remington v. Shaw (W. D. Mich.) 2 WH Cases 262), there will be employees of the employer who perform central office or central warehousing activities for the enterprise or for more than one establishment, and there may be other employees who spend time in the various establishments of the enterprise performing duties for the enterprise rather than for the particular establishment in which they are working at the time. Such employees are employed by the enterprise and not by any particular establishment of the employer (Mitchell v. Miller Drugs, 255 F. 2d 574; Mitchell v. Kroger Co., 248 F. 2d 935). Accordingly, so long as they perform such functions for the enterprise they would not be exempt as employees employed by a country elevator establishment operated as part of such an enterprise, even while stationed in it or placed on its payroll.

§ 780.618 Employees who may be exempt.

Employees employed "by" a country elevator establishment which qualifies for exemption will be exempt, if the "area of production" requirement is met, while they are engaged in any of the customary operations of the establishment which is commonly recognized as a country elevator. Included among such employees are those who are engaged in selling the elevator's goods or services, keeping its books, receiving, handling, and loading out grain, grinding and mixing feed or treating seed for farmers, performing ordinary maintenance and repair of the premises and equipment or engaging in any other work of the establishment which is commonly recognized as part of its operations as a country elevator. An employee employed by such an elevator is not restricted to performing his work inside the establishment. He may also engage in his exempt duties away from the elevator. For example, a salesman who visits farmers on their farms to discuss the storage of their grain in the elevator is performing exempt work while on such visits. It is sufficient that an employee employed by an elevator is, while working away from the establishment, doing the exempt work of the elevator. If the establishment is engaged only in activities commonly recognized as those of a country elevator and none of its employees engage in any other activities, all the employees employed by the country elevator will come within the exemption if no more than five employees are employed in the establishment in such operations and if the "area of production" requirement is met.

§ 780.619 Employees not employed "by" the elevator establishment.

Since the exemption depends on employment "by" an establishment qualified for exemption rather than simply the work of the employee, employees who are not employed by the country elevator are not exempt. This is so even though they work in the establishment and engage in duties which are part of the services which are commonly recognized as those of a country elevator. Since they are not employed by the elevator, employees of independent contractors, farmers and others who work in or for the elevator are not exempt under section 13(a)(17) simply because they work in or for the elevator (see Walling v. Friend, 156 F. 2d 429; Mitchell v. Kroger, 248 F. 2d 935; Durkin v. Joyce Agency, 110 F. Supp. 918, affirmed sub. nom. Mitchell v. Joyce Agency, 348 U.S. 945). Thus an employee of an independent contractor who works inside the elevator in drying grain for the elevator is not exempt under this section.

EMPLOYMENT "WITHIN THE AREA OF PRODUCTION"

§ 780.620 "Area of production" requirement of exemption.

In addition to the requirements for exemption previously discussed, section 13(a)(17) requires that the employee employed by an establishment commonly recognized as a country elevator be "employed within the area of production (as defined by the Secretary)". This is a requirement similar to that contained in certain other exemptions in the Act (see Subparts H and J of this Part 780). Regulations defining employment within the "area of production" for purposes of section 13(a)(17) are, together with the regulations defining the term as used in other exemptions, contained in Part 536 of this chapter. All the requirements of the applicable regulations must be met in order for the exemption to apply. Under the regulations, an employee is considered to be employed within "the area of production" within the meaning of section 13(a)(17) if the country elevator establishment by which he is employed is located in the "open country or a rural community", as defined in the regulations, and receives 95 per cent or more of the agricultural commodities handled through its elevator services from normal rural sources of supply within specified distances from the country elevator. A definition of "area of production" in terms of such criteria has been upheld by the United States Supreme Court in Mitchell v. Budd, 350 U.S. 473. Reference should be made to Part 536 of this chapter for the precise requirements of the definition. However, it is appropriate to point out here that nothing in the definition places limits on the distance from which commodities come to the elevator for purposes other than the storage or marketing of farm products. The commodities 95 per cent of which are required by the definition to come from specified distances are those agricultural commodities received by the

elevator with respect to which it performs the primary concentration, storage, and marketing functions of a country elevator as previously explained (see § 780.608). This is consistent with the emphasis given, in the legislative history, to the country elevator's function of marketing farm products, mostly grain, for farmers (see 107 Cong. Rec. (daily ed.) p. 5883). Commodities brought or shipped to a country elevator establishment not for storage or for market but in connection with its secondary, incidental, or side-line functions of selling products and services used in the operation of a farm (see § 780.610) are not required to be counted in determining whether 95 per cent of the agricultural commodities handled come from rural sources of supply within the specified distances.

WORKWEEK APPLICATION OF EXEMPTION

§ 780.621 Employment in the particular workweek as test of exemption.

The period for determining whether the "area of production" requirement of section 13(a)(17) is met is prescribed in the regulations in Part 536 of this chapter. Whether or not an establishment is one commonly recognized as a country elevator must be tested by general functions and attributes over a representative period of time, as previously explained, and requires re-examination for exemption purposes only if these change. But insofar as the exemption depends for its application on the employment of employees, it applies on a workweek basis. An employee employed by the establishment is not exempt in any workweek when more than five employees "are employed in the establishment in such operations", as previously explained (see §§ 780.612–780.615). Nor is any employee within the exemption in a workweek when he is not employed "by" the establishment within the meaning of section 13(a)(17) (see §§ 780.616–780.619). This is in accordance with the general rule that the unit of time to be used in determining the application of the Act and its exemptions to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; Mitchell v. Hunt, 263 F. 2d 913; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697.) A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.622 Exempt workweeks.

An employee performing work for an establishment commonly recognized as a country elevator is exempt under section 13(a)(17) in any workweek when he is, for the entire workweek, employed "by" such establishment, if no more than five employees are "employed in the establishment in such operations", and if the "area of production" requirement is met.

§ 780.623 Exempt and nonexempt employment.

Under section 13(a)(17), where an employee, for part of his workweek, is employed "by" an "exempt" establishment (one commonly recognized as a country elevator which has five employees or less employed in the establishment in such operations in that workweek) and the employee is, in his employment by the establishment, employed "within the area of production" as defined by the regulations, but in the remainder of the workweek is employed by his employer in an establishment or in activities not within this or another exemption provided by the Act, in the course of which he performs any work to which the Act applies, the employee is not exempt for any part of that workweek (see Mitchell v. Hunt, 263 F. 2d 913; Waialua v. Maneja, 77 F. Supp. 480; Walling v. Peacock Corp., 58 F. Supp. 880; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 181 F. 2d 697).

§ 780.624. Work exempt under another section of the Act.

Where an employee's employment during part of his workweek would qualify for exemption under section 13(a)(17) if it continued throughout the workweek, and the remainder of his workweek is spent in employment which, if it continued throughout the workweek, would qualify for exemption under another section or sections of the Act, the exemptions may be combined (see Remington v. Shaw (W.D. Mich.) 2 WH Cases 262). The employee, however, qualifies for exemption only to the extent of the exemption which is more limited in scope (see Mitchell v. Hunt, 263 F. 2d 913). For example, if part of the work is exempt from both minimum wage and overtime compensation under section 13(a)(17) and the rest is exempt only from the overtime pay provisions under section 7(c), the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements. In this connection, attention is directed to two other exemptions in the Act which relate to work in grain elevators, which may apply in appropriate circumstances, either in combination with section 13(a)(17) or to employees for whom the requirements of section 13(a)(17) cannot be met. These other exemptions are those provided by sections 7(b)(3) and 13(a)(10). Section 7(b)(3), which is discussed in Subpart J of this Part 780, provides a limited overtime exemption for employees employed in the seasonal industry of storing grain in country grain elevators, public terminal and sub-terminal elevators, wheat flour mills, non-elevator bulk storing establishments and flat warehouses. Section 13(a)(10), which is discussed in Subpart H of this Part 780, grants a complete exemption from the Act's minimum wage and overtime requirements for individuals employed within the area of production in "handling" or "storing" agricultural or horticultural commodities for market. Grain is an agricultural commodity under the section 13(a)(10) exemption.

Subpart H—Employment Within Area of Production of Individuals Engaged in Specified Operations on Products of Agriculture, Exempted From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(10)

INTRODUCTORY

§ 780.700 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this subpart together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(10) of the Fair Labor Standards Act of 1938, as amended. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. This subpart deals specifically with the provisions of section 13(a)(10) which exempt from both the minimum wage and the overtime pay requirements of the Act certain individuals employed within "the area of production" who are engaged in specified operations performed on products of agriculture. Other subparts of this Part 780 discuss certain related exemptions. Such exemptions, which include the section 13(a)(6) exemption (see Subpart B of this part) for agriculture and certain irrigation workers, and the overtime exemptions contained in sections 7(c) and 7(b)(3) dealing with certain employment relating to agricultural commodities and in seasonal industries (see Subpart J of this part), are not discussed in this subpart except in their relation to section 13(a)(10). Questions relating to the ginning of cotton, previously named as an operation which could qualify for exemption under section 13(a)(10) of the Act but now deleted from this section and made the subject of a separate exemption under section 13(a)(18) by the 1961 amendments, are considered in Subpart F of this Part 780.

§ 780.701 Statutory provision.

Section 13(a)(10) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 and from the overtime provisions of section 7:

> any individual employed within the area of production (as defined by the Secretary), engaged in handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

As recognized by the Supreme Court in Maneja v. Waialua, 349 U.S. 254 (see § 780.155), the legislative history of the Act indicates that it was intended by this provision to complement or supplement the exemption applicable to employment in "agriculture" so as to assure more nearly equal treatment as between farmers who rely on independent establishments to perform the named opera-

tions and those who perform such operations with their own employees.

§ 780.702 What determines the application of the exemption.

It is apparent from the language of section 13(a)(10) that the application of this exemption depends upon the engagement by the individual employee in the operations named in the statute and his employment "within the area of production" as defined by the Secretary of Labor. The exemption does not depend upon the character of the business of the employer nor is it applicable to an employee because the employer performs the named operations in the establishment where the employee is employed, if the employee himself does not perform them. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may be exempt while others may not. These principles have been made clear in pertinent court decisions, such as Puerto Rico Tobacco Marketing Coop. Assn. v. McComb, 181 F. 2d 697; Farmers Reservoir Co. v. McComb, 337 U.S. 755; Maneja v. Waialua, 349 U.S. 254; Mitchell v. Stinson, 217 F. 2d 210; Jenkins v. Durkin, 208 F. 2d 941; Wyatt v. Holtville Alfalfa Mills, 106 F. Supp., 624; Shain v. Armour & Co., 50 F. Supp. 907 (W.D. Ky.) (see also Walling v. W. D. Haden Co., 153 F. 2d 196, certiorari denied 328 U.S. 866; North Shore Corp. v. Barnett, 143 F. 2d 172; Anderson v. Manhattan Ligherage Corp.,148 F. 2d 971, certiorari denied, 326 U.S. 722; and Walling v. Bridgeman-Russell, 2 W.H. Cases 785 (D. Minn.)). See also § 780.106.

§ 780.703 The exemption applies only to those plainly within it.

As previously noted in § 780.2, court decisions have firmly established that any exemption from this Act must be narrowly construed and cannot be extended to other than those "plainly and unmistakably within" its terms and spirit. This principle of strict construction has been consistently applied by the Supreme Court and other courts in cases relating specifically to the group of exemptions under consideration in this part, including the exemption which is discussed in this subpart (Addison v. Holly Hill Co., 322 U.S. 607, 617; Farmers Reservior Co. v. McComb, 337 U.S. 755, 759–760; 764–766; Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473; Bowie v. Gonzalez, 117 F. 2d 11. See also § 780.105). This principle applies even to so broadly phrased an exemption as that for "agriculture" because, as stated by the Supreme Court in the Waialua case, "no matter how broad the exemption, it was meant to apply only to agriculture" (349 U.S. at 260). It applies even more clearly to the exemption in section 13(a)(10), which is not broadly phrased at all, but very specifically enumerates each of the separate operations to which it is applicable.

Requirements for Exemption

§ 780.704 Basic conditions of exemption.

In order to come within the exemption provided by section 13(a)(10) during any particular workweek an individual must (a) be employed "within the area of production" as defined by the Secretary of Labor (see § 780.705) and (b) be engaged either (1) in the performance of one or more of the operations, performed on agricultural or horticultural commodities and performed for market, which are specified in the section, or (2) in "making" dairy products (see § 780.706).

§ 780.705 Employment "within the area of production".

The "area of production", within which an individual must be employed under section 13(a)(10), is defined in Part 536 of this chapter. The validity of this definition has been upheld by the Supreme Court in Mitchell v. Budd, 350 U.S. 473, rehearing denied, 351 U.S. 934. Without repeating any of the detailed provisions of that definition here, certain of the more basic requirements which govern its applicability will be indicated. Whether an employee is employed "within the area of production" is determined by the location of the "establishment" where he is employed. That establishment is within the area of production if it is located "in the open country or in a rural community" and within specified mileages from the source of 95 percent of the agricultural and horticultural commodities received there. Location of an establishment "in the open country or in a rural community" is further determined under the definition by its geographical separation from communities of designated populations. The fact that an employee is, under the definition, "employed within the area of production" does not, however, in itself bring him within the exemption from the operation of the wage and hours requirements provided by section 13(a)(10) of the Act. An employee is within the exemption only if, while thus employed, he is engaged in operations named in that section.

§ 780.706 Engagement in the named operations.

(a) If an individual is employed within the area of production (see § 780.705), the application of the exemption in section 13(a)(10) to him will depend on his engagement during his workweek in the named operations of "handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products." As indicated in § 780.702, whether or not the exemption applies is determined by whether the employee is, as an individual, engaged in these named operations. The operations are described in terms connecting physical contact with, or active work upon, a commodity being prepared for market or processed. The section refers only to employees individually engaged in the operations specified. The Department has, therefore, consistently taken the position that this exemption applies only to those employees who actually engage in the enumerated activities and not to all employees in a plant where named operations are performed. For judicial support of this view, see Farmers Reservoir Co. v. McComb, 337 U.S. 735; Puerto Rico Tobacco Marketing Coop. Assn. v. McComb, 181 F. 2d 697; Jenkins v. Durkin, 206 F. 2d 941; and other cases cited in § 780.702.

(b) An employee is engaged in the named operations only if (1) he is actually individually engaged in the performance of (i) operations expressly named in section 13(a)(10) (other than the making of dairy products), (ii) which are performed on "agricultural or horticultural commodities", and (iii) which are so performed "for market", or if (2) he is actually individually engaged in "marking" dairy products. Accordingly, for the exemption to apply there must actually be individual engagement by the employee in activities that are themselves an integral part of a named operation, as distinguished from activities that are not a part of the operation itself but are only a necessary incident, or closely related and directly essential, to it. Activities which are closely related and directly essential to a named operation by which goods are produced for commerce will bring the employee performing them within the coverage of the Act but not within the section 13(a)(10) exemption unless the activities are part of the named operation itself. See, in this connection, Farmers Reservoir Co. v. McComb, 337 U.S. 775, and Mitchell v. Stinson, 217 F. 2d 210.

§ 780.707 Employees not exempt because not engaged in named operations.

It follows from the principles discussed in § 780.706 that the exemption provided by section 13(a)(10), like other exemptions in the Act which depend on engagement by employees in specified activities, does not apply to employees whose individual duties do not bring them within the statutory language, such as employees during the dead season; bookkeepers, clerks, stenographers, and other office employees; guards and watchmen; janitors and charwomen; and other maintenance, service, and miscellaneous employees who do not engage directly in any of the operations named, which are performed by their employer upon the commodities prepared or processed in the establishment where they are employed. Similarly, since the operations described do not include the manufacture of packages or containers used in the shipment of agricultural or horticultural commodities or dairy products, employees engaged therein are not within the exemption. (See Mitchell v. Stinson, 217 F. 2d 210; Phillips v. Meeker Cooperative Light & Power Assn. 63 F. Supp. 743, affirmed on other grounds, 158 F. 2d 698; Abram v. San Joaquin Cotton Oil Co., 46 Supp. 969 (S.D. Calif.); Heaburg. v. Independent Oil Mill, 46 F. Supp. 751 (W.D. Tenn.); Colbeck v. Dairyland Creamery Co., 70 S.D. 283, 17 N.W. 2d 262; Damutz v. Wm. Pinchbeck, Inc., 66 F. Supp. 667, 670, Aff'd 158 F. 2d 882; Jenkins v. Durkin, 208 F. 2d 941; Maneja v. Waialua, 349 U.S. 254, 271; cf. Maisonet v. Central Coloso, Inc. (D.P.R.) 2 W.H. Cases 753).

OPERATIONS ON "AGRICULTURAL OR HORTICULTURAL COMMODITIES"

§ 780.708 Performing operations on "agricultural or horticultural commodities" as a condition of exemption.

An employee performing the specified operations of handling, packing, storing, compressing, pasteurizing, drying, preparing in the raw or natural state, or canning of commodities must be engaged in performing such operations on "agricultural or horticultural commodities" if the performance of these operations is to qualify him for exemption. In addition, as explained in § 780.715, even if such operations are performed on agricultural or horticultural commodities their performance by an employee will not qualify him for exemption unless they are performed "for market". An employee employed within the area of production and engaged in performing the named operations on agricultural or horticultural commodities for market will come within the exemption even though the commodities are used in dairy products; it does not matter whether such operations also qualify the employee for exemption under section 13(a)(10) as an individual engaged in "making * * * dairy products".

§ 780.709 The "agricultural or horticultural commodities" referred to in the exemption.

The "agricultural or horticultural commodities" referred to in section 13(a)(10) are, in general, those cultivated, raised, and harvested by farmers which are referred to in section 3(f) and which are discussed in §§ 780.121–780.125 in Subpart B of this Part 780. The legislative history of this exemption (see Maneja v. Waialua, 349 U.S. 254) and the requirement of the statute that the operations on the commodities be performed "for market" further indicate that the exemption has reference to such farm commodities as are produced and delivered to others by farmers. Accordingly, it is the view of the Department of Labor that the "agricultural or horticultural commodities" to which section 13(a)(10) has reference are commodities which (a) have resulted from the use of agricultural or horticultural techniques and (b) are, at the commencement of the named operations, in the form in which they are customarily harvested or marketed by farmers or in which they normally come from the farm and before their natural state has been substantially changed or destroyed.

§ 780.710 Commodities produced by agricultural or horticultural techniques.

Commodities resulting from the use of "agricultural or horticulture techniques", in the case of products of the soil, are those commodities that are planted and cultivated by man. Among such commodities are the following: grains, forage crops, seeds, fruits, vegetables, nuts, sugar cane, fibre crops, tobacco, mushrooms, and nursery products, including those transplanted from a wild state, but not forest seedlings. In addition to such products of the soil, commodities produced by agricultural techniques include live domesticated animals such as cattle, sheep, goats, and poultry and their recurring products such as milk, eggs, wool, and mohair (See colloquy among Congressmen Lucas, Lea, and Keller, 82 Cong. Rec. 1783–1784, as to "ordinary agricultural commodities of the farm"; see also §§ 780.121–780.124. See, however, Stratton v. Farmers Produce Co., 134 F. 2d 825, holding the exemption inapplicable to the handling of livestock and poultry). Furs procured from fur-bearing animals raised by man are included, whereas furs from animals of the same kind that have remained in their natural habitat until trapped or killed for their fur are not.

§ 780.711 Commodities not included.

The term "agricultural or horticultural commodities" as used in section 13(a)(10) does not have reference to commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. Consequently, commodities such as meats and meat products, breakfast cereals, flour, sugar, peat and other uncultivated mosses, minerals, wild rice, wild animals, wild fruits and wild plants are not considered agricultural or horticultural commodities within the meaning of the exemption. Trees and timber products are also not considered agricultural or horticultural commodities even when grown in managed forests. Support for this position is found in the fact that a separate exemption is provided in section 13(a)(15) for certain logging operations and in the fact that sections 3(f) and 13(a)(6) do not include forestry operations in general, but are limited to situations where they are incidental to farming operations. Therefore, employees who perform any of the enumerated operations upon any of these commodities, or upon others similarly derived from industrial or nonagricultural processes, are not within the exemption.

§ 780.712 Exemption relates to "farm-market" commodities.

Generally, as previously indicated in § 780.709, to be an agricultural or horticultural commodity within the meaning of section 13(a)(10) the commodity must be in the form in which it normally comes from the farm and before any substantial change in its natural form has taken place or in a form in which it is customarily harvested or marketed by farmers. Typical of such commodities are eggs and nuts in the shell, honey, fruits, vegetables, hops, sugar cane and sugar beets, as they come from the farm; nursery products as they normally come from the greenhouse or field; live animals and poultry; and unpasteurized fluid milk or cream. Hides are to be distinguished from furs of fur-bearing animals raised by the farmer. Hides are normally by-products of slaughtering operations which customarily are performed off the farm by others than the farmer, whereas fur farmers customarily skin the animals on the farm and market the furs rather than the whole animals. Mohair and wool which have not been processed or mixed with other commodities are "agricultural commodities" within the meaning of section 13(a)(10). For purposes of the section threshed grain, shelled corn, cured sweet potatoes, dry edible beans removed from the pod, cream separated from milk, ginned cotton, cottonseed, cotton linters, and unstemmed farm-cured tobacco are considered agricultural or horticultural commodities since they are in the form customarily marketed by farmers. Consequently the performance of the enumerated operations on these commodities is within the exemption. The fact that such commodities may have been in storage before operations are performed on them does not change their character as agricultural or horticultural commodities.

§ 780.713 Operations on processed commodities not included.

As indicated in § 780.712, the threshing of grain, the shucking of corn, and other operations normally performed on farm commodities before they leave the farm do not destroy their character as "agricultural or horticultural commodities." On the other hand, such commodities as grease, tallow, tankage, hides, cereals, manufactured feeds, citrus waste, bagasse, beet pulp, flour, raw sugar, alfalfa meal, shelled nuts, milled rice, stemmed, redried, fermented or bulked tobacco, slaughtered animals or poultry, meat products, butter, cheese, dried or evaporated milk, casein, ice cream, dried or frozen fruits, brined cherries, sauerkraut, cider, vinegar, wine or beer, pickled vegetables, and a variety of other processed commodities which have been cut, cracked, sliced, peeled, heated, frozen, or subjected through industrial processes to other changes are no longer in a form in which they are customarily marketed by farmers, and have therefore lost their character as agricultural or horticultural commodities of the kind to which section 13(a)(10) refers. Operations on them thereafter, even if of the types enumerated in that section, will not come within the exemption because not performed on the "agricultural or horticultural commodities" to which the section has reference. Exemption of operations performed on commodities changed in form and no longer in their natural state cannot reasonably be said to have been contemplated under section 13(a)(10), which provides no such exemption for most of the operations by which such change in form may be effected. Neither the language nor the purpose of this provision justifies the view that an exemption inapplicable to all but a few processing operations is nevertheless applicable to subsequent operations relating to the processed commodity, which operations are a further step removed from the farm. Certain processed commodities, such as flour, raw sugar, dried or frozen fruits, dressed meats or poultry, etc. may be characterized as agricultural or horticultural commodities for purposes of some statutes, but cannot be considered as agricultural or horticultural commodities within the meaning of section 13(a)(10). In this connection,

see Bowie v. Gonzales, 117 F. 2d 11; Lewis v. Nailling, 36 F. Supp. 187 (W. D. Tenn.).

§ 780.714 Ownership of commodities.

For purposes of section 13(a)(10) ownership of the commodities is not a determinative factor in the applicability of the exemption. The exemption is applicable to an employee engaged in the named operations whether or not the commodities are owned by his employer. For example, employees of brokers, commission houses and farmers may come within the exemption upon meeting its requirements.

Operations on Commodities "for Market"

§ 780.715 Performance of operations "for market".

The requirement that the operations be performed on agricultural or horticultural commodities "for market" is applicable to all of the named operations in section 13(a)(10) except the making of dairy products. Unless done "for market" no handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities constitutes a ground for exemption of an employee engaged in these operations. Where the named operations are performed on the commodities to prepare them for a market in which the employer expects to dispose of them as thus prepared, without any substantial subsequent change in their form, the operations are considered to be performed "for market". Such a "market" may be either a purchaser of the commodities or a purchaser of the services performed on them, such as a farmer on whose commodities the named operations are performed. On the other hand, the named operations are not performed "for market" if they are performed, not to prepare the commodities for disposal by the employer in the form in which they are left by the named operations but to prepare them instead for other operations of the employer by which the commodities will be further processed or converted into different products. The exemption does not apply to employees performing the named operations on commodities as a preparation for further processing rather than for market.

§ 780.716 Form in which commodities are marketed as a factor.

Where the employer receives agricultural or horticultural commodities in the natural form in which they normally come from the farm, and disposes of them in substantially the same form after his employees perform such named operations on them as handling, packing, storing, or preparing in the raw and natural state, the operations are considered as performed "for market". Certain of the named operations, however, such as canning, and in most instances drying, effect a change in the natural form of agricultural or horticultural commodities and destroy their character as such. Such operations are also considered to be performed "for market" so long as the employer will dispose of the commodities in substantially the form in which they are left by the named operations, but not where he will process them further and market only the product of the subsequent operations. It should be remembered, of course, that performance "for market" of a listed operation is no ground for exemption unless, when it commences, the operation is performed upon "agricultural or horticultural commodities." Thus, while the exemption may apply to employees engaged in each of several such operations performed on such commodities if the commodities reach market in their natural form, and while it may apply to employees engaged in such operations as canning or drying of agricultural or horticultural commodities even though the canned or dried commodities are to be further prepared for market by handling, packing, or storing operations, it cannot apply to employees engaged in the handling, packing, or storing for market of the canned or dried commodities because such commodities are no longer "agricultural or horticultural commodities."

§ 780.717 Change in form of commodities after performing named operations.

If an employer disposes of a commodity in a form other than that in which the operations named in section 13(a)(10) leave it, operations performed on it by his employees prior to its change of form will not be "for market" but for the subsequent nonexempt operation which changes its form. Thus, employees of poultry or meat packers, or of other employers who slaughter poultry or livestock which they receive, are typically not within the exemption when such employees pick up, receive, transport, or otherwise handle or prepare such poultry or livestock for their employer's subsequent operations. Their handling of the poultry or livestock is not "for market" because the commodities will not be disposed of in the form in which the named operation leaves them (Bush v. Wilson, 157 Kan. 82, 138 F. 2d 457). Employees of a sugar mill operator who transport sugar cane to the mill, where it is to be processed, are not engaged in handling the cane "for market," and are not within the section 13(a)(10) exemption. See Bowie v. Gonzalez, 117 F. 2d 11. Similarly, the packing of vegetables in cartons for freezing, before the employer markets them as frozen products, or the canning of agricultural or horticultural commodities which the employer intends to re-can, would not meet the "for market" requirement. An employee "handling" and "storing", at a country grain elevator or at a mill, wheat which his employer expects to mill before disposing of it, is not performing those operations "for market" (Gaskin v. Clell Coleman and Sons, 2 W.H. Cases 977, 980); they would be performed "for milling", and consequently not within the exemption. Although in Tobin v. Flour Mills of America, 185 F. 2d 596, 602, the court concluded that wheat was stored "for market" in a situation where the employer did not know whether it would be sold on the market in the form in which it was stored, or would be milled before it was marketed, this decision does not affect the conclusion that wheat is not stored "for market" if an employer knows or has reason to believe he is going to mill it before he markets it. On the other hand, employees of an independent country grain elevator handling grain intended to be sold to others in the same form in which it is received would be handling it "for market". The same principles apply in the case of country or rural "receiving stations" in which employees are handling or performing other named operations on milk, cream, live poultry, eggs, or other agricultural or horticultural commodities. Where these stations are independently operated and the commodities they receive are marketed to others in substantially the same form in which they come from the farm, the employees will be performing such operations "for market". However, where the receiving station is operated by an enterprise which processes such commodities at another plant by operations not named in section 13(a)(10), the employees are not handling the commodities "for market" (Mitchell v. Park, 14 WH Cases 43, 36 Lab. Cases 65,191 (D. Minn.)). They could be considered to do so only if the form in which the commodities are disposed of by the main plant is substantially unchanged from that in which they are left by the operations which qualify for exemption.

§ 780.718 Operations performed for farmers.

Where an employer performs operations named in section 13(a)(10) for farmers on commodities which are agricultural or horticultural commodities within the meaning of the section, without taking title to the commodities, his employees will be performing such operations "for market" if the employer disposes of the commodities in the form in which the named operations leave them. This would be true of employees of a country grain elevator handling and storing grain which the elevator ships and sells for the farmer. In such a case the "for market" requirement is not affected by the fact that the grain is handled and stored under government loan, nor does it matter that a different employer may have cleaned the grain before it goes into storage. Other examples of employees who may be performing operations "for market" are employees engaged in cleaning seeds bought and sold by their employer for farmers or in cleaning seeds belonging to farmers, or in the custom shelling of corn. Employees of an auctioneer who are actually engaged in handling agricultural commodities such as livestock for sale at auction are also performing "for market" activities.

§ 780.719 Performance of more than one of named operations "for market".

Notwithstanding the fact that each of the operations listed in section 13(a)(10) prior to the words "for market" is individually qualified by that phrase, any such operation can be performed "for market" within the meaning of the section either alone or in combination with

others of the listed operations. If the commodities will reach market in substantially the form in which the particular operation leaves them, any such operation may be considered to be performed "for market" notwithstanding further operations are to be performed on the same commodities before they are marketed. Thus, where the employees of an employer perform more than one of the named operations on an agricultural or horticultural commodity, all of them will be considered "for market" if the employer disposes of the commodity in the form in which the last of the named operations leaves it. For example, an employer who packs fresh fruit may have employees engaged in several of the enumerated operations "for market." Some may be "handling" it, "storing" it, "preparing" it in its "raw or natural state" in various ways, and finally "packing" it in crates and loading it onto transportation facilities. Since it is then disposed of by the employer in the form in which the exempt "packing" operations left it, all of the employees performing the other enumerated operations would be doing so "for market". It is immaterial whether these operations are performed in one or several establishments or by the same or different employees.

§ 780.720 Operations performed within and outside "area of production".

Sometimes an employer may have some employees employed within the "area of production" and others outside the "area of production" who perform operations on the same agricultural or horticultural commodities before the employer disposes of them. If the operations by employees who are not employed within the "area of production" are performed first and do not change the commodities from the form in which they normally come from the farm or are harvested or marketed by farmers, employees of the employer who are employed within the "area of production" will be within the exemption if their operations on the commodities are those named in section 13(a)(10), provided the employer disposes of the commodities in the form in which the named operations leave them. If, on the other hand, the employees employed within the "area of production" perform the first operations on the agricultural or horticultural commodities, and these are operations named in section 13(a)(10), the performance of subsequent operations on the same commodities by employees of the employer who are not employed within the "area of production" will not cause the prior operations to be viewed as not performed "for market" so long as such subsequent operations do not change the commodities from the form in which they were left by the named operations performed within the "area of production", and the employer disposes of the commodities in such form. For example, employees whose work consists of receiving eggs at first concentration points within the area of production for shipment to another establishment of their employer outside the area of production where the eggs are candled, graded, and packed, are performing such operations "for market" because the subsequent operations in the other establishment do not effect any change in the form of the eggs. In the above situations the operations performed outside the area of production are, of course, not exempt.

Scope of the Named Operations

§ 780.721 Operations included within the exemption generally.

As previously noted, section 13(a)(10) does not exempt employees employed within the area of production in every type of operation on agricultural or horticultural commodities but exempts only those actually engaged in the specifically enumerated operations. The named operations comprise two general categories. One includes certain specified operations performed "for market" upon "agricultural or horticultural commodities." The other includes the operations involved in making dairy products. In the following discussion, the particular operations in the first group will be considered first. To the extent that milk and cream are "agricultural or horticultural commodities" (see § 780.12), this portion of the discussion will be applicable to them. Reference should, however, be made to the subsequent discussion of "making dairy products" for a consideration of operations on such commodities which may be a ground for exemption even though not included among the named operations performed for market. The operations named in section 13(a)(10) may be broadly characterized as of two types: (a) Non-processing operations (handling, packing, storing, compressing and preparing in the raw or natural state) which make no substantial change in the form (physical structure or chemical content) of an agricultural or horticultural commodity, and (b) specifically designated processing operations (pasteurizing, drying, canning, and making cheese or butter or other dairy products) which do make substantial changes in the form of the commodity.

§780.722 Exemption cannot be extended to processing operations not named.

(a) The language of section 13(a)(10), unlike that contained in other provisions of the Act exempting employees from overtime requirements only, does not in terms mention "processing" of agricultural or horticultural commodities. Certain specified processing operations only are included among the listed operations. The section was not intended to provide an exemption with respect to any employee engaged within the area of production in processing operations other than those expressly named. The term "processing operations," as here used, refers to operations which commonly involve the application of heat, cold, or mechanical pressure to such an extent that the natural form of the commodity undergoes substantial change. Examples of processing by means of heat are the drying, the cooking, the roasting, and the canning of commodities. The freezing of commodities is an example of processing by means of cold. The squeezing, pressing, or crushing, the shelling, and the milling of commodities are examples of processing by means of mechanical pressure. It will be noted that some of these are, and some are not, mentioned in section 13(a)(10).

(b) Section 13(a)(10) specifies very definitely the precise processing operations included within the exemption. This specificity of enumeration has been pointed out by the courts as a reason for restricting such an exemption to the named operations and not extending it to other operations which might be of a somewhat similar nature (see § 780.2). In Bowie v. Gonzalez, 117 F. 2d 11, the Court held that the processing of sugar cane is excluded from section 13(a)(10) because the section exempts only "certain processes which are specifically mentioned and among which the processing of sugar cane into sugar is not found. It cannot be important that sugar processing is similar to those operations included in section 13(a)(10) as section 7(c) is ample evidence of the fact that Congress had sugar processing in mind and knew how to include it when it so desired." So, too, in Maneja v. Waialua, 349 U.S. 254, the Supreme Court treated sugar milling as a "quasi-industrial processing," analogous to "ginning" (then included in the operations listed in section 13(a)(10)) and "canning", and viewed it as excluded from section 13(a)(10) since, unlike those two processing operations, it was not there specifically enumerated. Inclusion in section 7(c) of an operation not mentioned in section 13(a)(10) would thus, as the Court indicated, mark the "outer limit of Congressional concession to this type of processing."

§ 780.723 Illustrations of processing operations not included.

Among the employees excluded from the exemption by the principle stated in § 780.722 are those engaged in such operations as the cracking, grinding, crushing, or milling of grains, sugar crops, and other farm commodities, the extraction from farm commodities of oils, juices, syrups, etc. by the application of pressure, the manufacture from such commodities of flours, feeds, starches, sugars, etc., the processing of cottonseed, flaxseed, etc., the breaking and separating of eggs, the slaughtering and dressing of livestock or poultry and the picking of poultry, the bulking, stemming, and redrying of tobacco, the making of tobacco products (cigars, cigarettes, chewing and pipe tobaccos, etc.), the shelling of dried coffee seed, or nuts, the peeling or cutting of fruits or vegetables or the extracting of fruit and vegetable juices and oils (where not an integral part of canning the agricultural or horticultural commodity), the brining of cherries, the freezing of fruits, vegetables, eggs, etc., the roasting of coffee or nuts, the decortication of fibre crops, the manufacture of preserves from fruits, and other similar processing operations, not expressly mentioned in section 13(a)(10), which involve changing the form of the agricultural or horticultural commodity from the natural state in which it normally leaves the farm. These processing operations, like

the processing of sugar cane, are not a ground for exemption under section 13(a)(10) because they are not specifically mentioned. These are only illustrative and not exhaustive of operations to which the exemption does not apply. In addition to the cases cited in § 780.722, the following cases are illustrative of the judicial consideration that has been given to operations such as those described above: Stratton v. Farmers Produce Co., 134 F. 2d 825 (where the court contrasted section 7(c) and 13(a)(10), and excluded from section 13(a)(10) operations not there enumerated but expressly mentioned in section 7(c)); Mitchell v. Idle-Wild Farm, Inc., 13 W.H. Cases 315 (D. Conn.); Fleming v. Farmers Peanut Co., 128 F. 2d 404; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969 (S.D. Calif.); Mitchell v. Budd, 350 U.S. 473; McComb v. Puerto Rico Tobacco Marketing Coop. Assn, 80 F. Supp. 953, 181, F. 2d 697.

§ 780.724 Activities incidental to named operations.

An activity which is incidental to an enumerated operation is not by reason of that fact brought within the scope of the named operation. However, an activity which is incidental to a named operation may in itself be a named operation. When that is the case, it will be exempt if the other conditions of the exemption are met. Handling, for example, may be incidental in some manner to the performance of every operation listed. If it is to be exempt, however, it must be because it is the type of handling, namely, the handling of an agricultural commodity for market, which in itself is an exempt operation.

Named Operations Performable on the Specified Commodities for Market

§ 780.725 General statement on performance of named operations.

Separately considered in the following sections are the particular operations named in section 13(a)(10) of the Act which, if performed on agricultural or horticultural commodities for market, will exempt an employee engaged in them from the operation of the wage and hours provisions if he is an individual employed "within the area of production" (as defined by the Secretary of Labor). If an employee spends his entire workweek in such operations and satisfies the "area of production" requirement he is exempt regardless of whether he engages in a single one of such operations or in several. Apart from the making of dairy products, discussed in §§ 780.765 et seq., these are the only operations in which an employee may engage that can bring him within the terms of this exemption. No employee is exempted by virtue of this section in any workweek in which, while engaged in otherwise covered employment, he spends any portion of his time in operations other than those named, even though they are performed on agricultural or horticultural commodities for market. This is true irrespective of whether agricultural or horticultural commodities subjected to such operations remain agricultural or horticultural commodities after performance of the operations. The fact that an employee does not normally engage in any of the specific operations named in the statute will not, of course, preclude application of the exemption to him in any workweek in which he does actually and physically engage in such operations.

"Handling"

§ 780.726 Exempt "handling".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "handling" of agricultural or horticultural commodities for market. It is clear from what has already been said that an employee is, for purposes of the exemption, so engaged only if he himself is actually and physically engaged in "handling" commodities, and then only if the commodities he handles are "agricultural or horticultural commodities" within the meaning of the Act and are being handled "for market." Although exemption of employees engaged in making dairy products is expressly provided for by another clause, employees of receiving stations who do not engage in such operations may be exempt if they are engaged in handling of milk or cream within the area of production and for market. It should be remembered that the performance of further operations on the commodities handled by an employee may defeat the exemption for "handling" if such operations are performed by his employer and if they change the form of the commodities so that, when he disposes of them, they are no longer "agricultural or horticultural commodities." In such event, the employee cannot be said to be engaged in handling them "for market." The fact that the "handling * * * of livestock" is an operation specifically mentioned in section 7(c) (providing a partial exemption from the overtime provisions of the Act) does not indicate that section 13(a)(10) is inapplicable to this operation. Livestock, until slaughtered, is an agricultural commodity and the specification of the term "handling" in this section as well as in section 7(c) indicates the intention of Congress to grant the total exemption to such operations where the "area of production" and "for market" requirements are satisfied. (Compare Maneja v. Waialua, 349 U.S. 254, with Stratton v. Farmers Produce Co., 134 F. 2d 825.)

§ 780.727 Activities included in "handling".

The term "handling," as applied to agricultural or horticultural commodities, connotes physical contact with the commodities themselves, but does not embrace "processing" operations (see § 780.729). The term has reference to those physical operations customarily performed in obtaining agricultural or horticultural commodities from producers' farms, transporting them to market or to an establishment where further operations are to be performed in preparation for market, receiving and unloading them at such an establishment, weighing or counting them or otherwise determining upon what basis the producer is to be paid, placing them within the establishment, moving them from one place to another therein, delivering them to warehouses or to conveyances for their transportation away from the establishment, and transporting them away from the establishment (Tobin v. Flour Mills of America, 185 F. 2d 596; Holt v. Barnesville Farmers Elevator Co., 145 F. 2d 250). "Handling" includes the loading of the commodities on trucks, wagons, etc. in the producers' fields or at concentration points. It also includes transportation of the agricultural commodities from farm to concentration points or to establishments where further operations are to be performed, between such establishments, and away from such establishments. Employees delivering farm products to market who, because they are not employed by a farmer, are not within the agricultural exemption provided by section 13(a)(6), may nevertheless be exempt under section 13(a)(10) if they are employed "within the area of production" and the commodities they transport are "agricultural or horticultural commodities." In establishments where the commodities are prepared for market, the assembling, sorting, binning, piling, or stacking of the commodities are typical "handling" operations. In the case of livestock temporarily held at pens pending sale or shipment, the penning, feeding, watering, and bedding down of the animals would be additional examples. Where the agricultural or horticultural commodities are packed (see §§ 780.730 et seq.) for market without changing their natural form, "handling" includes moving the bags, boxes, cases, barrels, bales, coops, and other loaded containers to wagons, trucks, railroad cars or other conveyances.

§ 780.728 Activities not included in "handling".

Activities that change the natural form of agricultural or horticultural commodities are not "handling" the commodities within the meaning of the Act. Also, activities that are not a part of the actual handling of the commodities are not "handling" merely because they are necessary to the handling operations. For example, the repair and upkeep of facilities used in handling agricultural or horticultural commodities, the icing of trucks and refrigerated cars used in transporting them (Gordon v. Paducah Ice Mfg. Co., 41 F. Supp. 980 (W.D. Ky.)), or contracting activities in connection with the acquisition of them do not constitute "handling" within the meaning of the exemption. Further, it is clear that the clerical work necessary to maintain accounts regarding the commodities handled or payrolls for the employees who handle them is not the "handling" of the commodities.

§ 780.729 Handling as a part of processing.

Although "handling", within the meaning of section 13(a)(10), does not include processing operations (see Abram v. San Joaquin Cotton Oil Co.,

46 F. Supp. 969 (S.D. Calif.)), in some cases handling may be an integral part of a processing operation, in which case the applicability of the exemption would depend upon whether or not that processing operation is a named operation. For example, moving fruits or vegetables from one operation to another in the course of canning is exempt not as "handling" as named in section 13(a)(10) but because it is considered an integral part of canning operations. In other situations handling may itself constitute a processing operation, as in the piling of tobacco in the course of bulking. Bulking, like slaughtering, results in a substantial change in the natural form of the commodity and since it is not a named processing operation, the exemption is not applicable. (See Mitchell v. Budd, 350 U.S. 473, Puerto Rico Tobacco Marketing Coop. Assn. v. McComb, 181 F. 2d 697 (C.A. 1) and Subpart D of this Part 780.)

"PACKING"

§ 780.730 Exempt "packing".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "packing" of agricultural or horticultural commodities for market. It is clear from what has previously been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "packing" commodities, and then only if the commodities he is engaged in packing are "agricultural or horticultural commodities" within the meaning of the Act and are being packed "for market."

§ 780.731 Activities included and excluded.

The term "packing" refers generally to the physical operations involved in placing agricultural or horticultural commodities in containers, and then closing and fastening those containers. Examples of specific activities typically included as a part of this operation are placing such commodities as fresh fruits, vegetables, and eggs in boxes, cartons, crates or other suitable containers; bagging unshelled nuts; and sacking grains. Also included as an actual part of the packing operation itself are labeling the containers, pre-cooling in the packing plant by means of ice, water, or cold air, and placing layers of crushed ice in the containers with the commodities. Assembling box shook and crates and stapling knocked down cartons for current use in the packing house are also included as a part of packing whether done by employees of the packer or of an independent contractor. On the other hand, repacking, freezing the commodities as distinguished from precooling, and manufacturing the containers themselves, are not considered a part of packing. Also not included are such processing operations as meat packing, bulking tobacco, and such operations as cutting and trimming celery to heart size.

"STORING"

§ 780.732 Exempt "storing".

Neither the minimum-wage nor the maximum hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "storing" of agricultural or horticultural commodities for market. It is clear from what has already been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "storing" of commodities, and then only if the commodities he is engaged in storing are "agricultural or horticultural commodities" within the meaning of the Act and are being stored "for market." So long as these requirements are met and the area of production requirement is satisfied, the mere fact that the commodities stored have been previously packed, handled, or otherwise prepared for market without effecting any change in their natural form will not render the exemption inapplicable to an employee engaged in the storing operations, even though the earlier operations were performed in another establishment. Storing of frozen fruits or vegetables is not within the exemption, since they are no longer agricultural or horticultural commodities within the meaning of the Act.

§ 780.733 Activities included and excluded.

The term "storing" refers to physical operations customarily performed in caring for agricultural or horticultural commodities. Among the specific activities considered a part of storing are placing the commodities in the storage facility; caring for them while there; and removing them from the storage facility to conveyances used for their subsequent shipment (Tobin v. Flour Mills of America, 185 F. 2d 596; Holt v. Barnesville Farmers Elevator Co., 145 F. 2d 250). "Storing" broadly includes any nonprocessing activities performed in taking care of agricultural or horticultural commodities such as guarding them and operating machinery controlling the temperature at which they must be stored. Watchmen may consequently be physically engaged in "storing" (Jenkins v. Durkin, 208 F. 2d). The repairing of the storage facilities is not, however, a part of storing (Colbeck v. Dairyland Creamery Co., 70 S.D. 283, 17 N.W. 2d 262); nor are activities which are actually a part of processing operations. Thus, the brining of cherries or cucumbers, which changes the chemical content of those commodities, and the cold-packing (packing with sugar and placing into cold storage) or freezing of fruit or vegetables are preserving or processing operations and not "storing". Nor does "storing" include the icing of refrigerator cars and trucks used in the transportation of perishable commodities (Gordan v. Paducah Ice Mfg. Co., 41 F. Supp. 980), and other operations which, although perhaps necessary to the storing of agricultural or horticultural commodities are not a part of caring for the commodities in a storage facility.

"COMPRESSING"

§ 780.734 Exempt "compressing".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "compressing" of agricultural or horticultural commodities for market. It is clear from what has already been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "compressing" and then only if the commodities in the compressing of which he engages are "agricultural or horticultural commodities" within the meaning of section 13(a)(10) and are being compressed "for market." Furthermore, the significance of the term "agricultural or horticultural commodities" is in this case limited by the term descriptive of the operation. "Compressing" is a term generally applied to the cotton industry only, and the legislative history indicates the intention of Congress to give it such an application here. In practical effect, therefore, the exemption is limited to the compressing of cotton for market.

§ 780.735 Activities included and excluded.

The term "compressing", as used in section 13(a)(10), refers exclusively to the process of compressing bales of ginned cotton into standard or high-density bales and the recompressing of standard-density into high-density bales. For purposes of the exemption, "compressing" is considered to include not only the actual manipulation of the presses wherein the baled cotton lint is compressed but also the operations immediately related thereto and performed in connection therewith as integral parts of a single uninterrupted process. The term therefore includes receiving and weighing the baled cotton lint at the compressing establishment, moving the bales to the presses, placing the baled cotton lint in the presses, operating the presses, removing and tying steel bands around the bales, and moving the bales from the presses. It does not, however, refer to the process of pressing any commodities other than cotton, such as cottonseed, flaxseed, tung nuts, peanuts, fruits or vegetables, sugar cane or beets, or soybeans, all of which are frequently subjected to a form of pressing operation in extracting oil, juice, or syrup (Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969, 973 (extracting oil from cottonseed)).

"PASTEURIZING"

§ 780.736 Exempt pasteurizing".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor) who is engaged in the "pasteurizing" of agricultural or horticultural commodities for market. It is clear from what has already been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself

is actually and physically engaged in the "pasteurizing" of commodities, and then only if the commodities he is engaged in pasteurizing are "agricultural or horticultural commodities" within the meaning of the Act and are being pasteurized "for market." If the commodities being pasteurized are, as is commonly the case, raw milk or cream, the operation will result in a "dairy product" (see § 780.766) and the employee, if the area of production requirement is not, will be exempt because he is "making * * * dairy products" even if the operation is performed for further processing rather than "for market".

§ 780.737 Activities included in "pasteurizing".

As used in section 13(a)(10) "pasteurizing" refers to the process of inhibiting the growth of undesirable bacteria and organisms by the application of heat. The term usually refers to the performance of this operation on raw milk or cream. When so performed, the operation consists of heating the fluid milk or cream, holding it at a high temperature, and then cooling it. For purposes of the exemption, "pasteurizing" is considered to include also the placing of such milk or cream into bottles or other suitable containers.

"DRYING"

§ 780.738 Exempt "drying".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "drying" of agricultural or horticultural commodities for market. It is clear from what has already been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "drying" commodities and then only if the commodities in the drying of which he engages are "agricultural or horticultural commodities" within the meaning of the Act and are being dried "for market." The exemption does not extend to the drying of nonagricultural and nonhorticultural commodities such as uncultivated moss or lumber, or to the drying of commodities that have ceased to be agricultural or horticultural commodities by reason of a change effected in their natural state, such as fermented or stemmed tobacco or broken and separated eggs. It should be noted that the making of dairy products by means of drying operations may be exempt under another clause of this section without regard to the character of the commodity dried or whether it is dried for market.

§ 780.739 Activities included in "drying".

The term "drying" refers to operations performed on agricultural or horticultural commodities to remove or reduce their moisture content. It includes operations frequently described as "dehydrating." The drying itself may be performed by natural methods, such as heating in the sun, or by mechanical methods, such as ovens and furnaces. Typical commodities on which this operation may be performed are fruits, vegetables, eggs, hay, rice, sorghum, and tobacco.

§ 780.740 Drying where change in natural form of commodities is involved.

The drying operations included in the exemption may be performed on freshly harvested commodities and result in the first change in their raw or natural state. In such a case it would not matter whether the drying is of a kind customarily performed on the farm before the commodities are marketed by the farmer. In other situations the drying operations included in the exemption may be performed on commodities which have already been changed from their natural form by operations performed on the farm. In such a case the prior change in form would not render the exemption inapplicable so long as the commodities were produced by agricultural or horticultural techniques and are, when drying operations are commenced, still in a form in which they are customarily marketed by farmers or in which they normally come from the farm (see § 780.712). The degree to which drying operations included in the exemption will affect the form of the commodities on which they are performed will also vary. In some instances, drying operations within the exemption may consist of lowering the moisture content of the agricultural or horticultural commodity without substantially changing the form in which it normally comes from the farm, as when grain is dried to permit its safe storage. In other situations, the drying may consist of a process that changes the raw and natural form of the commodity to such an extent that the dried product is no longer an "agricultural or horticultural commodity" within the meaning of section 13(a)(10). Examples of such commodities are dried apricots, raisins, prunes, and dried eggs.

§ 780.741 Processing preliminary to actual drying.

If operations effecting a change in the natural form of an agricultural or horticultural commodity are performed before actual drying commences and are of such character that the commodity to be dried is no longer an "agricultural or horticultural commodity" within the meaning of the exemption, the application of the exemption may vary, depending on the facts. The exemption is inapplicable to any such operations prior to actual drying that are performed separately as an independent process and not as an integral part of a single continuous drying or dehydrating process. It is also inapplicable to any such prior operations that are not necessary steps in the drying process. In these situations the drying also is nonexempt because, when it commences, the commodities on which it is performed are not "agricultural or horticultural commodities". To illustrate, if tobacco is stemmed and then immediately dried, the stemming is not exempt because it is not a necessary step in the drying process but a separate and independent process not named in section 13(a)(10), and the drying is not exempt because it is not performed on "agricultural or horticultural commodities" within the meaning of that section. On the other hand, where preparatory processing operations on "agricultural or horticultural commodities" are necessary steps in the drying of such commodities and are performed as an integral part of a single continuous drying process, such necessary operations are included within the exemption. This would be true, for example, where preparatory peeling, cutting, pitting, and treating with chemicals are necessary steps in the drying of fresh fruit and are performed with the drying as integral parts of a single continuous process.

"PREPARING IN THEIR RAW OR NATURAL STATE"

§ 780.742 Exempt "preparing".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in "preparing in their raw or natural state" agricultural or horticultural commodities for market. It is clear from what has previously been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "preparing" commodities "in their raw or natural state" and then only if the commodities thus being prepared are "agricultural or horticultural commodities" within the meaning of the Act and are being thus prepared "for market." "First processing" operations, which are the operations initially changing the natural form of an agricultural or horticultural commodity are clearly not intended to be included in "preparing in their raw or natural state," since Congress expressly provided, in section 7(c) of the Act, a limited exemption from the overtime provisions only for such operations within the area of production. Also, the express provisions for exemption of employees engaged in certain processing operations such as canning or drying would be rendered meaningless and unnecessary if "preparing in their raw or natural state" were interpreted to include "processing." The legislative history discloses that the term "preparing in their raw or natural state" was used in contradistinction to the term "processing" to describe operations which leave the original form of the commodities unchanged. (81 Cong. Rec. 7876–7878; Maneja v. Waialua, 349 U.S. 254; Puerto Rico Tobacco Marketing Co-op Ass'n v. McComb, 181 F. 2d 697; Bowie v. Gonzalez, 117 F. 2d 11; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969 (S.D. Calif.). Cf. Fleming v. Farmers Peanut Co., 128 F. 2d 404).

§ 780.743 "Raw or natural state".

Preparing an agricultural or horticultural commodity "in" its "raw or natural state" requires that the commodity both be in such state when the operations are performed and not be changed from such state by the operations. It is therefore necessary to know what the "raw or natural state" of the

particular commodity is, as well as the effect on such of the particular operations. A number of factors must be considered in their relationships to the specific situation (Puerto Rico Tobacco Marketing Co-op Ass'n v. McComb, 181 F. 2d 697). As a general rule, however, the words "raw or natural state", as applied to agricultural or horticultural commodities for purposes of the exemption, are considered to describe the condition of such commodities as they are customarily harvested and marketed by the farmer or as they normally come from the farm. When an operation changes this condition in significant respects, the commodity is no longer in its "raw or natural state". Puerto Rico Tobacco Marketing Co-op Ass'n v. McComb, 181 F. 2d 697; Bowie v. Gonzalez, 117 F. 2d 11; cf. Fleming v. Farmers Peanut Co. 128 F. 2d 404. "Raw or natural state," as the phrase is here used, is not synonymous with "fresh," as used in the language of section 7(c) providing an exemption from the overtime requirements for employers engaged in the first processing, etc. of perishable or seasonal "fresh" fruits or vegetables. Thus, the exemption under consideration here may apply to operations performed on unshelled nuts and on dry edible beans notwithstanding both these commodities are outside the category of "fresh" fruits or vegetables for purposes of section 7(c).

§ 780.744 General characteristics of included operations.

The term "preparing in their raw or natural state," as used in this exemption, refers to a wide variety of relatively simple, non-processing operations at the conclusion of which the product is still an agricultural or horticultural commodity. The legislative history indicates that these operations should be such simple ones as washing the raw commodity. (See colloquy among Senators Barkley, Schwellenbach, and Black, 81 Cong. Rec. 7876–7878.) While these operations may be performed either on or off the farm, the commodities must remain in their raw or natural state from the beginning to the end of the operation. Included under this term are those non-processing operations which make no substantial changes in either the physical structure or chemical content of the commodities, although they may affect their general outward appearance, as in the case of washing or waxing.

§ 780.745 Operations on particular commodities.

Application of the principles just discussed to the many varieties of operations performed on the different types of agricultural or horticultural commodities requires an ascertainment of the condition of the particular commodities as they normally come from the farm and of the effect, if any, on such condition which is produced by the particular operations in question. What operations do and what operations do not constitute "preparing in their raw or natural state" of particular commodities when these tests are applied is illustrated by the typical examples given in the following sections of operations commonly performed on the commodities there described.

§ 780.746 Fruits and vegetables.

Among the non-processing operations which are included in preparing fruits or vegetables in their raw or natural state are cleaning, trimming, washing, polishing, grading, sizing, sorting, hand-picking, coloring, cooling (including vacuum and hydro-cooling), and wrapping. Excluded processing operations are peeling, cutting, slicing, chopping, shredding, dicing, freezing, pressing, squeezing, stemming, and pickling.

§ 780.747 Grain, seeds, and field crops.

Cleaning, shucking corn, threshing grain and dry edible beans, sorting, grading, fumigating, disinfecting, and mixing are among the included non-processing operations (Holt v. Barnesville Farmers Elevator Co., 145 F. 2d 250; Remington v. Shaw, 52 F. Supp. 465). Shelling corn for feed, seed, or industrial use is also considered to be in this category. Such corn which is normally marketed by the farmer in its shelled form is to be distinguished from corn harvested as a perishable fresh vegetable to be prepared for human consumption as "corn on the cob" or as canned or frozen corn. Cracking, grinding, crushing, chopping, milling and such operations as hulling rice are processing operations which are not included. Manufacturing feeds from various grains or straw paper from wheat straw are also not included.

§ 780.748 Hemp, flax, and other fibre crops.

Decortication is a processing operation which is not included in preparing these crops in their raw or natural state.

§ 780.749 Nursery stock.

Cleaning, waxing, trimming and grading are some of the non-processing operations included in the preparing of nursery stock in its raw or natural state. The term "nursery stock" includes shrubs, vines, and flowers, and fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees or forest tree seedlings). In this connection also see §§ 780.710 and 780.711.

§ 780.750 Nuts.

In preparing nuts in their raw or natural state, cleaning, grading, sizing, and sorting unshelled nuts are some of the non-processing operations included. Nuts in most instances are customarily marketed by farmers in the shell. In this respect they are unlike such commodities as dry edible beans which are usually removed from their covering by the farmer before marketing. The shelling of nuts, therefore, is considered a processing operation which alters the structure of the nut as an agricultural or horticultural commodity (cf. Fleming v. Farmers Peanut Co., 128 F. 2d 404), and like cracking, picking, or roasting, is not included in this exemption. Subsequent operations on the nut meats, such as roasting or manufacturing them into nut butter, are also processing and not included.

§ 780.751 Sugarcane and sugar beets.

Making raw sugar or syrup from these commodities is a processing operation which is not included in "preparing in their raw or natural state". See Maneja v. Waialua, 349 U.S. 254; Bowie v. Gonzalez, 117 F. 2d 11.

§ 780.752 Tobacco.

Stripping (pulling the leaves from the stalk), tying the leaves into hands, grading, and sorting are among the non-processing operations which are included in preparing in the raw or natural state, when performed on unstemmed and unfermented tobacco. However, fermenting or bulking ("a process which changes the natural state of the freshly cured tobacco as significantly as milling changes sugar cane"—see Mitchell v. Budd, 350 U.S. 473), stemming (removing the center rib from the leaves—see Puerto Rico Tobacco Marketing Co-op Ass'n v. McComb, 181 F. 2d 697), and other processing operations, such as making cigars, cigarettes, and plug, chewing, or pipe tobacco, are excluded.

§ 780.753 Poultry and livestock.

Since livestock and poultry cease to be agricultural commodities when they are slaughtered, neither the slaughtering nor any subsequent operation performed on the carcasses, meat, hides, or by-products in preparation for market can constitute the "preparing in their raw or natural state" of agricultural or horticultural commodities.

§ 780.754 Eggs.

Candling, sizing, grading, cooling, waxing, and oiling are included in the preparing of eggs in their raw or natural state. Breaking, separating, mixing, and freezing are excluded.

§ 780.755 Milk.

Cooling, testing, and standardizing (blending batches of raw milk of different butterfat content) are included in preparing milk in its raw or natural state. (Since these operations are not "making * * * dairy products", employees who do not perform them for market" can be exempt under section 13(a)(10) only where the operations are performed as an integral part of a process of making such products, as explained in § 780.770).

§ 780.756 Wool.

Preparing wool in its raw or natural state includes cleaning and grading.

§ 780.757 Fur.

In the case of fur which is an agricultural commodity (see § 780.710), the cleaning and grading of the raw fur is included in preparing in the raw or natural state.

"CANNING"

§ 780.758 Exempt "canning".

Neither the minimum-wage nor the maximum-hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is engaged in the "canning" of agricultural or horticultural commodities for market. It is clear from what has pre-

viously been said that an employee is, for purposes of the exemption, engaged in the named operations only if he himself is actually and physically engaged in "canning" and then only if the commodities in the canning of which he engages are "agricultural or horticultural commodities" within the meaning of the Act and are being canned "for market". Employees who can wild fruits or jellies or preserves made therefrom, for example, are not exempt as engaged in canning agricultural or horticultural commodities. The "canning" of "agricultural or horticultural commodities" includes all operations necessary for the transformation of such a commodity from its natural state into a canned product by a single continuous process, even though the natural state of the commodity is destroyed by such operations some time before it is actually sealed hermetically in the can. Recanning is not the canning of "agricultural or horticultural commodities" because the natural state of the commodities has been destroyed by the original canning operations. Canning of commodities for subsequent recanning is not canning "for market" (see § 780.713, §§ 780.715–780.717). It should be noted that the canning exemption provided by section 13(a)(10) applies only to employees "engaged in" canning, and thus differs from the exemption from overtime only for canning fresh fruits and vegetables which is provided in section 7(c) of the Act. As explained in subpart J of this Part 780, the latter exemption applies to employees in a place of employment where their employer is engaged in such canning, including employees whose work is a necessary incident to the canning as well as those engaged in the canning itself.

§ 780.759 Canning of mixtures containing products other than specified commodities.

The canning exemption in section 13(a)(10) is by its terms limited to the "canning" of "agricultural or horticultural commodities". For purposes of the exemption it is not enough that agricultural or horticultural commodities in the form in which they are harvested and marketed by the farmer constitute a part, or even a principal part, of what is canned. An employee cannot be said to be engaged in canning "agricultural or horticultural commodities" if a substantial part of the ingredients of the product being canned consists of commodities outside this category. In determining whether the amount of foreign ingredient is substantial, the nature and degree of change in the product resulting from the addition of the foreign ingredients may properly be taken into consideration. The canning of marmalade, tamales, chili or meat products, for example, is not an exempt operation since a substantial part of the ingredients used are not agricultural commodities within the meaning of the exemption. As an enforcement policy, sugar and syrup used as a packing medium in the ordinary canning of fresh fruits or vegetables is not considered to be a foreign ingredient. If the commodity being canned contains only an insubstantial amount of foreign ingredients, the canning is considered to be canning of agricultural or horticultural commodities and the exemption, if otherwise applicable to the canning operations, extends also in such a case to the handling and preparation of the foreign ingredients for use in the exempt operations.

§ 780.760 Operations included in "canning".

As used in section 13(a)(10) of the Act (as also in secs. 7(c), 13(a)(5), and 13(b)(4)), the term "canning" means hermetically sealing and sterlizing or pasteurizing and has reference to a process involving the performance of such operations. Other operations performed in connection therewith as integral parts of a single uninterrupted canning process are included, whether preparatory to, concurrent with, or subsequent to the hermetical sealing and sterlizing or pasteurizing of the canned product. There are also certain subsequent operations which are included even though performed after an interruption in the process (see H. Rep. No. 1453, 81st Cong. 1st sess., 95 Cong. Rec. 14,878, 14,932–14,933; Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891; Tobin v. Blue Channel Corp., 198 F. 2d 245; Mitchell v. Stinson, 217 F. 2d 214). Illustrations of the operations included and excluded are given in §§ 780.761–780.764. Employees engaged in operations which are not themselves an integral part of the actual process of canning the commodities are not engaged in "canning" within the meaning of the exemption even though their work may be necessary in some way to the cannery operations or may be covered because it is closely related and directly essential to such operations which constitute the production of goods for commerce (Mitchell v. Stinson, supra, and see § 780.764). The term "canning" does not include the placing of commodities or products in cans or other containers that are not hermetically sealed (see Johnson v. Johnson & Co., 47 F. Supp. 650), nor does it include hermetically sealing where no sterilizing or pasteurizing operations are performed. Such operations are "packing" or "processing" rather than "canning" (H. Rep. No. 1453, 81st Cong. 1st sess.).

§ 780.761 Necessary preparatory operations.

Among the operations performed as integral parts of a single uninterrupted canning process which are included in "canning" within the meaning of the exemption, are necessary preparatory operations performed on the products before they are placed in cans, bottles or other containers to be hermetically sealed and sterlized, as well as the actual placing of the commodities in such containers (Tobin v. Blue Channel Corp., 198 F. 2d 245; Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891). Examples of preparatory operations that are an actual part of "canning" where performed as essential and integrated steps in an uninterrupted canning process are such activities as weighing, cleaning, inspecting, peeling, cutting, squeezing, mixing, and cooling (see Mitchell v. Stinson, 217 F. 2d 214). The freezing by the canner of agricultural or horticultural commodities, to be stored for a protracted or indefinite period for future canning, is too remote from the actual canning to be an integral part of that operation. Of itself such freezing is not within the exemption because it is for canning rather than for market and is an operation, not named in section 13(a)(10), which changes the raw or natural state of the commodities as they normally come from the farm or are harvested or marketed by farmers. Because of such change, also, the subsequent canning of the frozen commodities would not constitute canning of "agricultural or horticultural commodities" within the meaning of the exemption (see §§ 780.713, 780.758).

§ 780.762 Operations subsequent to hermetical sealing and sterilizing.

"Canning," as used in section 13(a)(10), also includes operations performed after the hermetic sealing and sterilizing or pasteurizing, such as labeling the cans and placing them in cases or boxes for shipment, whether such subsequent operations are performed as part of an interrupted or uninterrupted canning process. Storing and shipping operations performed by the employees of the cannery in connection with its canned products, during weeks in which canning operations are going on, to make room for the canned products coming off the line or to make storage room are considered a part of canning for purposes of the exemption. The fact that such activities relate in part to products processed during previous weeks or seasons would not affect the application of the exemption, provided canning operations, such as hermetic sealing and sterilizing or labeling, are currently being carried on.

§ 780.763 Other activities performed as part of "canning".

It is plain that employees placing the commodities in the cans, operating the machinery that seals the cans or the equipment that sterilizes the canned product, or performing other operations on the canning line, as well as employees providing steam for cooking the commodities, are engaged in activities which are integral parts of canning (see Tobin v. Blue Channel Corp., 198 F. 2d 245; Mitchell v. Stinson, 217 F. 2d 214). In addition to these employees and those engaged in the necessary preparatory and subsequent operations previously described, there may be employees performing other activities as an integral part of a single uninterrupted canning process who will be considered engaged in "canning" within the meaning of the exemption. For example, can-loft workers, employees engaged in removing and carrying supplies from the stockroom for current use in canning operations, and employees whose duty it is to reform cans, when canning operations are going on, for current use and not for the purpose of producing a reserve supply to be used at some relatively remote

time, are engaged in such activities. Similarly, employees whose function is to assure continuity of the canning process by the repairing, oiling, or greasing, during the active season, of canning machinery or equipment currently used in the actual canning operations are considered to be engaged in "canning". The making of repairs in the production room such as to the floor around the canning machinery or equipment would also be included in "canning" where the repairs are essential to the continued canning operations or to prevent interruptions in the canning operations. Cleaning the canning machinery and equipment during the canning period in order to prevent interruptions or breakdowns is also an integral part of "canning".

§ 780.764 Other activities not performed as part of "canning".

In addition to the employees previously mentioned who are not engaged in activities which are a part of the "canning" referred to in section 13(a)(10), office employees who make up and maintain employment, social security, payroll, and other records such as bills of lading, packing tickets, time cards, and books and ledgers, canteen workers, nurses, laboratory workers developing new products, watchmen and general maintenance employees are not considered as being engaged in canning within the meaning of the exemption. The receiving, unloading, and storing of supplies such as salt, condiments, cleaning supplies, containers, etc., in the plant or warehouse for subsequent use in the canning operations would not be "canning" within the meaning of the exemption. The delivery of these articles from stock to meet the daily needs of the canning operations would, however, be an integral part of the canning process, as noted in § 780.763.

"Making Cheese or Butter or Other Dairy Products"

§ 780.765 Exempt "making" of "dairy products".

Neither the minimum-wage nor the maximum hours provisions of the Act apply with respect to an individual employed within the area of production (as defined by the Secretary of Labor), who is "engaged * * * in making cheese or butter or other dairy products." It will be noted that engagement by the individual employee in the operations thus described is sufficient in itself, under the statutory language, to bring him within the exemption if the area of production requirement is satisfied. These operations, unlike the others listed in section 13(a)(10), need not be performed "for market" or upon "agricultural or horticultural commodities" in order for the exemption to apply. The employee must, however, be actually and physically engaged in operations that properly may be characterized as "making" cheese or butter or other dairy products. As more fully explained in §§ 780.767–780.768, so long as such operations result in a dairy product, an employee engaged therein is engaged in "making" such product regardless of whether the product is to be sold as such or made into some other product and of whether the operations in question constitute first processing of milk or cream or a further processing of some dairy product previously made therefrom.

§ 780.766 Products which are considered "dairy products".

The following list includes some, but not all of the products considered to be "dairy products" (derived primarily from Agricultural Statistics—1960, U.S. Dept. of Agriculture, p. 405 (Dairy products: Quantities manufactured, United States, 1951–58)):

(a) *Milk.* Pasteurized fluid; skimmed, condensed, evaporated, or dried whole or skimmed milk; and concentrated skimmed milk.
(b) *Cream.* Sweet, sour, dried.
(c) *Butter.* Creamery, whey butter, renovated or process butter.
(d) *Cheese.* All ordinary varieties, including natural and processed.
(e) *Buttermilk.* Condensed, evaporated, dried.
(f) *Casein.* Dried or wet.
(g) *Malted milk powder.*
(h) *Milk sugar (crude).*
(i) *Ice cream.*
(j) *Sherbet (except water ices).*
(k) *Ice milk.*

§ 780.767 Making dairy products is not confined to first processing.

The term "dairy products" as here used is broad in scope and is not restricted to the products of first processing operations upon milk, whey, skimmed milk, or cream (as it is under the exemption from the overtime provisions provided by section 7(c) of the Act, discussed in Subpart J of this part). For purposes of section 13(a)(10) it is immaterial whether the processing begins with milk or with a milk product such as evaporated milk, buttermilk or cheese. The product being made must, however, be a dairy product. Thus, while separating milk into skimmed milk and cream is "making" a dairy product, the churning of the cream into butter and the drying of the skimmed milk may also come within the exemption.

§ 780.768 Making dairy products for conversion into other products.

The exemption is applicable to employees making dairy products, if the area of production requirement is satisfied, even though such products will not be marketed by the employer but will be converted into other products. This is true, for example, of employees making condensed milk for subsequent conversion into dried milk, and of employees producing frozen cream for later conversion into butter by the same employer.

§ 780.769 Operations performed on previously made dairy products.

Once a dairy product has been made, the performance at a subsequent time of other operations does not constitute "making" dairy products unless they are integral parts of the process or they actually convert the product into a dairy product of a different kind. Thus, storing, slicing and packaging cheese, and printing, wrapping and storing butter bought in bulk from cheese and butter makers are not within the exemption since when so performed they constitute neither the actual making of butter or cheese nor are they integral parts of making these products. Although the processing of wet into dry casein is "making" a dairy product, the further processing of casein is not. After whey is dried, screened and sacked, the subsequent regrinding, rescreening and resacking of dried whey that has become lumpy are operations performed merely to restore the dairy product to its original form after damage and do not constitute "making" dairy products. The process of "making" dried whey is completed when the product is once made, screened, and sacked and can be sold as dried whey.

§ 780.770 Operations which are an integral part of making dairy products.

"Making * * * dairy products" includes, in addition to the actual making of the products, all operations performed as an integral part of making them. Included are all the operations ordinarily performed at a plant making dairy products in preparing the products and placing them into containers, when performed as integral parts of the process of making the dairy products. Thus, such operations as receiving, weighing, cooling and testing the milk or cream are within the exemption if the area of production requirement is met. Also included in "making * * * dairy products" are such operations as handling the sugar used in making sweetened condensed milk, and handling the nondairy ingredients used in making ice cream. In cheese assembly plants, aging, cleaning, paraffining and weighing are part of making the dairy product. Such subsequent operations as slicing, wrapping and placing cheese into containers are also included when performed as an integral part of the cheese making process. The transfer of ingredients and supplies from stock to meet the daily needs of the processing operation would be considered an integral part of making the dairy product. So would the assembling of knocked-down boxes to be currently used in packing dairy products. The exemption is considered applicable, where the area of production requirement is met, to the repairing, oiling or greasing of machinery or equipment which is currently used in the actual processing operations where such work is essential to prevent interruptions in the processing operation. Similarly, cleaning the processing machinery or equipment in order to prevent interruptions or breakdowns and providing heat which is used for the exempt processing are considered integral parts of making dairy products and therefore exempt activities. Storing and shipping operations performed by the employees of the dairy in connection with its products during weeks in which the dairy products are being made, to make room for the products coming off the line or to make storage room, are also considered a part of making dairy products for purposes of the exemption.

§ 780.771 Employees not engaged in "making" the dairy products.

Employees such as bookkeepers and other office workers, canteen workers, nurses, general maintenance men and watchmen are not "making" dairy products within the meaning of the exemption (see Colbeck v. Dairyland Creamery Co., 70 S.D. 283, 17 N.W. 2d 262). Likewise, employees in milk and cream receiving stations where no actual processing takes place are not considered to be engaged in "making" dairy products. Where, however, receiving station employees and truck drivers are actually handling or preparing whole milk or cream "for market" (not for subsequent processing by the employer), they may, if employed within the area of production, qualify for exemption on that basis (see § 780.726). The exemption is inapplicable to employees manufacturing containers, laboratory workers developing new products, and employees receiving, unloading and storing supplies and containers for subsequent use in the operations, as well as employees assembling boxes for stock to be used at some relatively remote future time.

WORKWEEK APPLICATION OF EXEMPTION

§ 780.772 Employment in the particular workweek as test of exemption.

The period for determining whether the "area of production" requirement of section 13(a)(10) is met is prescribed in the regulations in Part 536 of this chapter. But insofar as the exemption depends for its application on the engagement by the employee in the named operations, it applies on a workweek basis. An employee may be exempt in one workweek and not in the next. This is in accordance with the general rule that the unit of time to be used in determining the application of the Act and its exemptions to an employee is the workweek (see Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; Mitchell v. Hunt, 263 F. 2d 913; McComb v. Puerto Rico Tobacco Co-op. Marketing Ass'n, 80 F. Supp. 953, affirmed 181 F. 2d 397). A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.773 Exempt workweeks.

Any employee engaged in operations named in section 13(a)(10) on agricultural or horticultural commodities for market or in making dairy products is exempt in any workweek when he engages exclusively in operations meeting the requirements of the section, if he is employed "within the area of production" as defined by the Secretary of Labor.

§ 780.774 Exempt and nonexempt employment.

Where an employee who is employed within the "area of production" performs during the same workweek both work which is exempt under this section 13(a)(10) and other work to which the Act applies, not exempt from the minimum wage or overtime pay requirements under this or any other section of the Act, he is not exempt that week (see McComb v. Puerto Rico Tobacco Co-op. Marketing Ass'n, 80 F. Supp. 953, affirmed 181 F. 2d 397; Mitchell v. Hunt, 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle, 80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880; Jordan v. Stark Bros. Nurseries, 45 F. Supp. 769; Waialua v. Maneja, 77 F. Supp. 480). This is an application of the general rule applicable to the agricultural and related exemptions in the Act, which are spelled out in such detail as to "preclude their enlargement by implication" (Addison v. Holly Hill, 322 U.S. 607), under which the performance of any nonexempt work during a workweek defeats an employee's exemption for that workweek.

§ 780.775 Work exempt under another section of the Act.

Where an employee's employment during part of his workweek would qualify for exemption under section 13(a)(10) if it continued throughout the workweek, and the remainder of his workweek is spent in employment which, if it continued throughout the workweek, would qualify for exemption under another section or sections of the Act, the exemptions may be combined (see Remington v. Shaw, 52 F. Supp. 465; and see Tobin v. Blue Channel Corp., 198 F. 2d 245, approved in Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891). The availability of a combination exemption depends on whether the employee meets all the requirements of each exemption which it is sought to combine, and the stricter of the requirements of each applies to the combination. The employee is qualified for an exemption in such a case only to the extent provided by whichever of the combined exemptions is more limited in scope. Thus, if part of an employee's work during the workweek is exempt from both minimum wage and overtime pay requirements under section 13(a)(10), and the rest is exempt only from the overtime pay requirements under section 7(c), the employee is exempt that week from the overtime requirements, but not from the minimum wage requirements.

§ 780.776 Segregation of exempt and nonexempt work.

Nothing in the Act requires an employer to segregate his employees or work in a situation where the employees' duties involve the performance without distinction of work both within and outside the terms of section 13(a)(10). On the other hand, if he seeks relief under section 13(a)(10) from the wage and hours requirements of the Act with respect to employees performing work within the terms of such section and other work as well, it is permissible for him to adopt a plan of segregation that will minimize the exclusion of such employees from exemption under the workweek unit rule. He may increase the number of his exempt employees by segregating the work between different groups of employees, employing one group exclusively in activities exempt under section 13(a)(10), or he may segregate the activities of each individual employee with respect to time of performance so as to bring him within the terms of section 13(a)(10) for as many complete workweeks as possible. Segregation of the activities of an employee within the workweek will not, of course, exempt the employer from compliance with the wage and hours requirements for any part of the workweek; the employer's duty to comply with such requirements for the entire workweek remains so long as any portion of the employee's covered work within such workweek is of a character other than that requisite to exemption of his employment from requirements of the Act. Moreover, no segregation of employees or work can be effective to bring within the exemption any employee who is not, under the Secretary's definition, employed "within the area of production." The burden of effecting segregation between exempt and nonexempt work as between particular workweeks is upon the employer.

Subpart I—Employment of Homeworkers in Making Wreaths; Exemption From Minimum Wage, Overtime Compensation and Child Labor Provisions

INTRODUCTORY

§ 780.800 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart I together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(d) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage, overtime pay and child labor provisions of the Act for certain homeworkers employed in making wreaths from evergreens and in harvesting evergreens and other forest products for use in making wreaths. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemption provided in section 13(a)(6) of the Act for employees employed in agriculture is not discussed in this subpart. The meaning and application of the section 13(a)(6) exemption is fully considered in Subpart B of this Part 780.

§ 780.801 General explanatory statement.

Workers in rural areas sometimes engage, as a family unit, around the Christmas holidays, in gathering evergreens and making them into wreaths in their homes. Such workers, under well-settled interpretations by the Department of Labor and the courts, have been held to be employees of the firm which purchases the wreaths and furnishes the workers

with wire used in making such wreaths. The exemption for making wreaths under section 13(d) was included in the Fair Labor Standards Amendments of 1961 to provide minimum wage, overtime pay, and child labor exemptions for this limited class of workers who produce the wreaths in their homes. This exemption, along with the section 7(b)(3) overtime exemption referred to in § 780.819, is available to workers who meet the prescribed requirements. This Subpart I explains the meaning and application of the section 13(d) exemption with respect to such workers.

REQUIREMENTS FOR EXEMPTION

§ 780.802 Statutory requirements.

Section 13(d) of the Act, as amended by the 1961 amendments to the Fair Labor Standards Act, exempts from the minimum wage provisions of section 6, the overtime requirements of section 7 and the child labor restrictions of section 12:

any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

§ 780.803 What determines the application of the exemption.

The application of this exemption depends on the nature of the employee's work and not on the character of the employer's business. To determine whether an employee is exempt an examination should be made of the activities which that employee performs and the conditions under which he performs them. Some employees of the employer may be exempt and others may not.

§ 780.804 General requirements.

The general requirements of the exemption are that:

(a) the employee must be a homeworker;

(b) the employee must be engaged in making wreaths as a homeworker;

(c) the wreaths must be made principally of evergreens;

(d) any harvesting of the evergreens and other forest products by the homeworkers must be for use in making the wreaths by homeworkers.

§ 780.805 Homeworker.

The exemption applies to "any homeworker". A homeworker within the meaning of the Act is a person who works for an employer in or about a home, apartment, tenement, or room in a residential establishment.

§ 780.806 In or about a home.

Whether the work of an employee is being performed "in or about a home", so that he may be considered a homeworker, must be determined on the facts in the particular case. In general, however, the phrase "in or about a home" includes any home, apartment, or other dwelling place and surrounding premises, such as yards, garages, sheds or basements. A convent, orphanage or similar institution is considered a home.

§ 780.807 Exemption is inapplicable if wreath-making is not in or about a home.

The section 13(d) exemption does not apply when the wreaths are made in or about a place which is not considered a "home". Careful consideration is required in many cases to determine whether work is being performed in or about a home. Thus, the circumstances under which an employee may engage in work in what ostensibly is a "home" may require the conclusion, on an examination of all the facts, that the work is not being performed in or about a home within the intent of the term and for purposes of section 13(d) of the Act.

§ 780.808 Examples of places not considered homes.

The following are examples of work places which, on examination, have been considered not to be a "home":

(a) Living quarters allocated to and regularly used solely for production purposes, where workers work regular schedules and are under constant supervision by the employer, are not considered to be a home.

(b) While a convent, orphanage or similar institution is considered a home, an area in such place which is set aside for and used for sewing or other productive work under supervision is not a home.

(c) Where an employee performs work on wreaths in a home and also engages in work on the wreaths for the employer during that workweek in a factory, he is not exempt in that week, since some of his work is not performed in a home.

§ 780.809 Wreaths.

The only product which may be produced under the section 13(d) exemption by a homeworker is a wreath having no less than the specified evergreen content. The making of a product other than a wreath is nonexempt even though it is made principally of evergreens.

§ 780.810 Principally.

The exemption is intended to apply to the making of an evergreen wreath. Such a wreath is one made "principally" of evergreens. "Principally" means chiefly, in the main or mainly (Hartford Accident & Indemnity Co. v. Casualty Underwriters Insurance Co., 130 F. Supp. 56). A wreath is made "principally" of evergreens when it is comprised mostly of evergreens. For example, where a wreath is composed of evergreens and other kinds of material, the evergreens should comprise a greater part of the wreath than all the other materials together, including materials such as frames, stands and wires. The principal portion of a wreath may consist of any one or any combination of the evergreens listed in section 13(d), including "other evergreens." The making of wreaths in which natural evergreens are a secondary component is not exempt.

§ 780.811 Evergreens.

The material which must principally be used in making the wreaths is listed as "natural holly, pine, cedar, or other evergreens". Other plants or materials cannot be used to satisfy this requirement.

§ 780.812 Other evergreens.

The "other evergreens" of which the wreath may be principally made include any plant which retains its greenness through all the seasons of the year, such as laurel, ivy, yew, fir, and others. While plants other than evergreens may be used in making the wreaths, such plants, whether they are forest products or cultivated plants, cannot be considered as part of the required principal evergreen component of the wreath.

§ 780.813 Natural evergreens.

Only "natural" evergreens may comprise the principal part of the wreath. The word "natural" qualifies all of the evergreens listed in the section, including "other evergreens". The term "'natural" means that the evergreens at the time they are being used in making a wreath must be in the raw and natural state in which they have been harvested. Artificial evergreens (Herring Magic v. U.S., 258 F. 2d 197; Cal. Casualty Indemnity Exchange v. Industrial Accident Commission of Cal. 90 P. 2d 289) or evergreens which have been processed as by drying and spraying with tinsel or by other means are not included. It is immaterial whether the natural evergreen used in making a wreath has been cultivated or is a product of the woods or forest.

§ 780.814 Harvesting.

The homeworker is permitted to harvest evergreens and other forest products to be used in making the wreath. The word "harvesting" means the removal of evergreens and other forest products from their growing positions in the woods or forest, including transportation of the harvested products to the home of the homeworker and the performance of other duties necessary for such harvesting.

§ 780.815 Other forest products.

The homeworker may also harvest "other forest products" for use in making wreaths. The term "other forest products" means any plant of the forest and includes, of course, deciduous plants as well.

§ 780.816 Use of evergreens and forest products.

Harvesting of evergreens and other forest products is exempt only when these products will be "used in making such wreaths". The phrase "used in making such wreaths" places a definite limitation on the purpose for which evergreens may be harvested under section 13(d). Harvesting of these materials for a use other than making wreaths is nonexempt. Also, such harvesting is nonexempt when the evergreens are used for wreath-making by persons other than

the homeworkers (see Mitchell v. Hunt, 263 F. 2d 913). For example, harvesting of evergreens for sale or distribution to an employer who uses them in his factory to make wreaths is not exempt.

WORKWEEK APPLICATION OF EXEMPTION

§ 780.317 Workweek is used in applying the exemption.

The unit of time to be used in determining the application of minimum wage and overtime exemptions to an employee is the workweek (see Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697). A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.318 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(d) is exempt from the Act's minimum wage, overtime requirements and child labor restrictions for the entire week.

§ 780.319 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under section 13(d) and the remainder under another section or sections of the Act, the exemptions may be combined. The employee's combination exemption is controlled by the exemption which is more limited in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under section 13(d) and the rest is exempt only from the overtime pay requirements (as under section 7(c) for the first processing of an agricultural commodity within the area of production during seasonal operations), the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements. (See last paragraph of § 780.320 of this subpart regarding the exemption from child labor requirements.) Attention is directed to the fact that a limited overtime exemption for employees employed in the decorative greens industry is provided under section 7(b)(3) of the Fair Labor Standards Act and Part 526 of this chapter. (See Subpart J of this Part 780.) This exemption is not limited to homeworkers.

§ 780.320 Exempt and nonexempt work.

(a) Where an employee in the same workweek performs work which is exempt from the minimum wage and overtime requirements of the Act and also engages in work to which these requirements apply but which is not exempt under this or any other section of the Act, he is not exempt from the minimum wage and overtime provisions of the Act in that week (see McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697; Mitchell v. Hunt, 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle, 80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880).

(b) Where a minor performs activities which would be exempt from the child labor provisions under section 13(d) and in the same workweek also engages in any work which is covered by the child labor provisions, the employer is not relieved from the child labor requirements of the Act during that workweek with respect to such minor. (Section 4.122 of this title.) In such case, his employer will be obliged to comply with the requirements of section 12(c) which forbids the employment of "oppressive child labor" in commerce or in the production of goods for commerce and the producer, manufacturer or dealer will be required to comply with section 12(a) which restricts shipment or delivery of goods produced in or about an establishment in which oppressive child labor had been employed. (See Part 4, Subpart G of this title.)

2. The present Subpart E (§§ 780.50–.53) of Title 29, Code of Federal Regulations, is redesignated as Subpart J and the title of the redesignated Subpart J reads as follows:

Subpart J—Employment Exempt From Overtime in Operations on Agricultural Commodities and in Seasonal Industries Under Sections 7(c) and 7(b)(3); Outside Buyers of Certain Commodities Under Section 13(b)(5)

a. Sections 780.50, 780.51, 780.52, and 780.53 of the present Subpart E of Title 29, Code of Federal Regulations, are redesignated as §§ 780.950, 780.951, 780.952, and 780.953, respectively.

b. Paragraph (a) of § 780.950 of Title 29, Code of Federal Regulations, as redesignated by Amendment 2, is amended J reads as follows:

§ 780.950 Meaning of term "canning".

(a) As used in section 7(c) of the Fair Labor Standards Act (as in sections 13(a)(5), 13(a)(10), and 13(b)(4)), the term "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. Other operations performed in connection therewith as integral parts of a single uninterrupted canning process are included, such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the labeling of the cans or other containers and the placing of the sealed containers in cases or boxes whether such subsequent operations are performed as a part of an uninterrupted or interrupted process. The term "canning" does not include the placing of commodities or products in cans or other containers that are not hermetically sealed, nor hermetically sealing where no sterilization or pasteurization is performed, as such operations are "processing" as distinguished from "canning".

(Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219)

Signed at Washington, D.C., this 30th day of October 1961.

CLARENCE T. LUNDQUIST,
Administrator.

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